117-129 8735

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 935.

THE STATE OF TENNESSEE, PLAINTIFF IN ERROR,

vs.

GEORGE K. WHITWORTH, TRUSTEE OF DAVIDSON COUNTY, TENNESSEE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

FILED SEPTEMBER 10, 1885.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 Middle District of Tennessee, Circuit Court of the United States for said District.

STATE OF TENNESSEE
vs.
GEO. K. WHITWORTH, Trustee, &c. } No. 2664.

Be it remembered that on the 13th day of Feb'y, 1884, a transcript from the Davidson county circuit court, State of Tennessee, was filed in this court, which transcript is in the words and figures following, to wit:

STATE OF TENNESSEE:

Pleas at the court-house in the city of Nashville, county of Davidson, and State aforesaid, on the second Monday, being the fourteenth day of January, in the year of our Lord one thousand eight hundred and eighty-four and in the one hundred and eighth year of American Independence.

Present: The Hon'l. Frank T. Reid, one of the judges of the
2 circuit courts of the State of Tennessee, and assigned to hold the circuit courts of the eighth judicial district in said State.

Petition. Filed July 30, 1883. *H. C. Hudson, D. C.*

The Petition of—

THE STATE OF TENNESSEE
against
GEO. K. WHITWORTH, Trustee of Davidson County, Tennessee.

To the Hon'l. Frank T. Reid, judge of the circuit court of Davidson county, Tennessee:

Petitioner would respectfully show unto the court that on the 11th day of December, 1845, the Legislature of Tennessee by an act incorporated the Nashville and Chattanooga Railroad Company for the purpose of constructing a railroad from Nashville to Chattanooga, Tennessee, and under said act said corporation was authorized to issue sixty thousand dollars of stock, of twenty-five dollars each and by subsequent legislation the company was authorized to increase the capital stock to such an amount as should be necessary to the completion of the road.

3 Petitioner further states that by acts of the Legislature afterwards passed authority was given for the construction of branch roads to connect with said main line, and for that purpose to issue stock; that said road and its several branches extending into the country were built accordingly, said main stem from Nashville to Chattanooga being constructed under said act of incorporation and the various amendments thereto, and said roads and its branches are now being operated and owned by the same company and in the same corporate name, and has been for a number of years.

Petitioner further states that by an act of the Legislature passed on the 22 of Jan'y, 1852, the Nashville and Northwestern Railroad

Company was incorporated and became a body politic and corporate for the purpose of constructing a railroad from Nashville to Hickman, Kentucky, with a capital stock of three million of dollars, divided into shares of one hundred dollars each, and under said act of incorporation and the amendments thereto the Nashville
4 and Northwestern railroad was built and became a body politic and corporate.

Petitioner further states that on the 21st day of Dec'r, 1870, an act was passed authorizing a bill to be filed in the chancery court at Nashville for the purpose of selling, among others, the Nashville and Northwestern railroad and its branches to pay the bonded indebtedness, which was a lien upon the road; that a bill was filed and said road was sold, and the Nashville and Chattanooga Railroad Company became the purchaser; and afterwards, upon an *ex parte* proceeding of the company, the corporate name was changed to that of the Nashville, Chattanooga, and St. Louis railway by a decree of the chancery court at Nashville, Tennessee, and by that name became a body politic and corporate, and has from then until now operated the entire line from Nashville, Tennessee, to Hickman, Kentucky.

Petitioner further states that said new corporation has issued stock to the amount of $6,670,331, worth a very large amount of
5 money. Said stock belongs to various persons unknown to your petitioner, but the Louisville and Nashville Railroad Company, a corporation doing business in the State of Tennessee, is the owner of $3,385,000 worth of said stock and has owned the same since 1879, and that G. M. Fogg, a citizen of Davidson county, is the owner of $—— of said stock.

Petitioner further states that said Nashville and Chattanooga Railroad Company and Nashville and Northwestern Railroad Compan*ies* had their chief office and place of business in Nashville, Tennessee, and the Nashville, Chattanooga and St. Louis railroad has had its chief office and principal place of business in Nashville, Tennessee since the corporate name was so changed, and under the revenue laws of this State the shares of stock should be taxed where such office is located, but the shares of stock have never been assessed for the purposes of taxation at any time, although it has been very valuable. Petitioner is advised that the reason said stock has not been assessed is that the shareholders claim that it is exempt
6 from taxation under the 38th section of the charter of the Nashville and Chattanooga Railroad Company's charter, and the 36th section of the act incorporating the Nashville and Northwestern Railroad Company, which is as follows: "The capital stock of said company shall be forever exempt from taxation, and the road, with all its fixtures and appurtenances, including the workshops, warehouses, and vehicles of transportation shall be exempt from taxation for the period of twenty years from the completion of the road, and no longer."

Petitioner insists that the exemption contemplates the capital stock and not the shares of stock, and that the shares of stock are subject to taxation like any other personal property, and that this claim of exemption on the part of the stockholders is entirely un-

tenable. Petitioner further states that by the act of March 7th, 1879, as amended by the act of March 27th, 1883, "all collectors of taxes are made assessors to assess any property which, by mistake of law or fret, has not been assessed for any previous year or
7 years. Petioner further states G. K. Whitworth is the trustee and tax collector of Davidson county, Tennessee, and as such is the assessor of all property which has not been assessed, and your petitioner, through its comptroller of the treasury, has directed said Trustee to assess said shares of stock in whosesoever hands it may be found, and this he refuses to do. Said demand and the endorsement of the refusal thereon is here filed as "Exhibit A," and as such made a part of this petition.

Premises considered, petitioner prays that an alternative writ of mandamus issue forthwith, directed to said G. K. Whitworth, as such Trustee, commanding him to appear before this honorable court at a day certain and show cause, if any he has, why he should not assess for taxation the shares of stock in the Nashville, Chattanooga & St. Louis railway held and owned by the Louisville & Nashville Railroad Company, and all other of said shares of stock, and upon final hearing a peremptory writ of mandamus issue, directed to said Geo. K. Whitworth, as such Trustee, commanding him to assess
8 for taxation the property as prayed in the foregoing petition.

CHAMPION AND HEAD.
J. B. DANIEL,
Sols. for Compl't.

I hereby waive the issuance of process and enter my appearance herein, this 30 day of July, 1883.

GEO. K. WHITWORTH,
Trustee of D. C.

Motion. Filed Aug. 4th, 1883. *H. C. Hudson, D. C.*

In the Circuit Court of Davidson County.

THE STATE OF TENNESSEE, on her Own Behalf and on the Relation of Davidson County,

vs.

GEO. K. WHITWORTH, Trustee of Davidson County, Tennessee.

The defendant moves the court to dismiss the petition filed in this case upon the following grounds:

1st. The State of Tennessee and Davidson county have neither any interest in the taxes due to the other, and, therefore, cannot be joined as co-petitioners for mandamus to compel an assessment of the taxes due to either.

9 2d. The granting of the prayers of the petition involves in a collateral manner the rights of every stockholder of the Nashville, Chattanooga and St. Louis railway, and yet none of those stockholders have been made parties to the suit.

3d. The shares of the capital stock of said company are exempt from taxation under the charter of the Nashville and Chattanooga Railroad Company and the Nashville and Northwestern Railroad

Company, and under the statutes of Tennessee, authorizing the change of name from the Nashville and Chattanooga Railroad Company to the Nashville, Chattanooga and St. Louis railway, and the obligations of the contracts contained in said charters and statutes is impaired by the subsequent — of said State, relied on as directing the assessment of said shares. Said subsequent statutes are, therefore, violative of the Constitution of the United States, and this defendant cannot be required to act in execution of them.

4th. The shares of said stock, if taxable at all, must be assessed to the various parties to whom they respectively belong in the various years since they were issued, and at their respective values during those years. The petition does not state the names of those owners, nor the value of the shares during those years, and there is no law providing any means by which defendant can ascertain those facts.

5th. As required by law, defendant has turned over the books for 1882 and previous years, and he now has no books upon which to assess for any of those years. He has not received the books for 1883, as he is not yet entitled to them.

6th. No one is authorized to institute a suit on behalf of the State of Tennessee, unless the authority is conferred by statute, and there is no statute authorizing the institution of this suit, so far as it is a suit on behalf of the State.

ED. BAXTER,
Att'y for Def't.

N. O. & St. L.

STATE OF TENNESSEE *vs.* GEO. K. WHITWORTH, Trustee.

In this cause, by agreement of counsel of plaintiff and defendant, it is ordered that the petition and writ be amended so that the mayor and city council of Nashville be made a party relator. But the defendant shall be allowed to make such additional defense as he may [be] advised shall be necessary on account of the amendment thus made.

Petition and Bond. Filed January 17th, 1884.—*J. E. Aldrich, clerk.*

The petition of Geo. K. Whitworth, Trustee, &c., of Davidson county, to Frank T. Reid, judge, &c., of the circuit court of Davidson county, State of Tennesse.

Petitioner shows to the court that he is a resident and citizen of Davidson county, State of Tennessee, and is the Trustee of said county; that heretofore, on the — day of —, 1884, the State of Tennessee filed a petition for a mandamus to compel him, as Trustee, to assess for State and county taxation all the stock of the Nashville, Chattanooga and St. Louis railway, amounting to more than seven million of dollars, wherever and however held and owned, and which will amount at the current rate to more than $10,000; that said corporation was chartered by the State of Tennessee, and has its principal offices in Nashville, though the bed of its main road runs from Hickman, in the State of Kentucky, to

Chattanooga, in the State of Tennessee, passing in lines through the States of Alabama and Georgia; that its branches run in to the counties of Wilson, Warren, Lincoln, Coffee, and several of the counties of the State of Tennessee.

Petitioner further shows that the charter of said corporation forever exempts the capital stock of said corporation from taxation, and that the stock issued by said corporation and now sought to be taxed in this proceeding was issued upon the property belonging to said corporation, lying and being in the
13 States and counties aforesaid, and belong to persons unknown to petitioner, most of whom are now residents of the State; so the petitioner avers that the suit [is] one arising under the Constitution of the United States, and he prays that the same may be removed to the circuit court of the United States for the middle district of Tennessee, and that this honorable court will proceed no further therein, except to make an order for said removal, and petitioner herewith offers a bond, with good and sufficient security, for his entering in said circuit court of the United States on the first day of its next session a copy of the record in this suit and for paying all costs that may be awarded by said court, if said court shall hold that this suit was wrongfully or improperly removed thereto.

EAST AND FOGG.

I, Edward H. East, being duly sworn, say I am a member of the firm of East and Fogg, and attorneys for petitioner in the
14 above-entitled cause, and that I have read the foregoing petition, and know contents thereof, and that the statements and allegations made therein are true, as I verily believe.

E. H. EAST.

Subscribed and sworn to before me, this Jan'y 17th, 1884.

J. E. ALDRICH, *Clk.*

I approve the within petition.
Jan'y 17th, 1884.

G. K. WHITWORTH,
Trustee, D. C.

Bond.

Know all men by these presents, that Geo. K. Whitworth, as principal, and ——— ———, as sureties, are held and firmly bound unto the State of Tennessee in the penal sum of one hundred dollars, payment whereof shall be well and truly made, yet upon these conditions: That said Whitworth having petitioned the circuit court of Davidson county, State of Tennessee, for the removal of a certain cause therein pending, wherein the State of Tennessee is plaintiff and George K. Whitworth, Trustee, is defendant, to the circuit court of the United States in and for the middle district of Tennes-
15 see. Now, if said Whitworth shall enter in said court of the United States on the first day of its next session a copy of the records in said suit, and shall pay all costs that may be awarded by said court if said court shall hold said suit was wrongfully removed

thereto, then this obligation to be void; otherwise in full force and virtue.

This Jan'y, 1884.

G. M. FOGG, *Security.*
EDWARD H. EAST, *Security.*

Minutes.

SATURDAY MORNING, *February 2d*, 1884.

Court met according to adjournment.
Present: The Hon'l. Frank T. Reid, judge, &c.

STATE OF TENNESSEE, in her own behalf and on the relation of Davidson County,
vs.
GEO. K. WHITWORTH, Trustee of Davidson County, Tenn.

This cause was heard on the pleadings and proceedings herein and on the petition and bond filed herein by the defendant
16 in the above-entitled cause, under a provision of an act of Congress of the United States, passed March 3d, 1875, entitled An act to determine the jurisdiction of the circuit court of the United States, and to regulate the removal of causes from State courts and for other purposes, and on motion of attorney for defendant it is order[ed] that the bond and security offered by the said defendant be approved; that this court proceed no further in the cause, and that this cause be removed into the circuit court of the United States for the middle district of Tennessee, at Nashville.

Bill of Costs.

State tax, 5.00; county tax, 2.50	7 50
Clerk Aldrich—	
Filing petition for mandamus, 25; 2 d'k't'g cause, 20; filing petition and bond for removal, 50; motion, 25; filing motion, 25; d'k't'g bill costs, 50; 2 orders, 50; copy bill costs, 25; transcript & seal, 5.00	7 70
	$15 20

17 STATE OF TENNESSEE, *Davidson County:*

I, J. E. Aldrich, clerk of the circuit court of said county and State aforesaid, certify the foregoing to be a true and correct transcript of the record and bill of costs in case of the State of Tennessee, in its own behalf and on the relation of Davidson County, *vs.* Geo. K. Whitworth, Trustee of Davidson County, as the same remains of record and on file in my office. Witness my hand and seal of office at office in Nashville, this 12th day of February, A. D. 1884, and in the 108 year of our Independence.

J. E. ALDRICH, *Clerk,*
By H. C. HUDSON, *D. Clk.*

On the 28th day of April, 1884, an answer was filed which is in words and figures as follows, to wit:

The Answer of George K. Whitworth, Trustee to the Petition for the Writ of Mandamus. Filed by the State of Tennessee.

In the Circuit Court of Davidson County.

18 Respondent admits that the Nashville & Chattanooga Railroad Company was chartered by the General Assembly of the State of Tennesee, by an act passed the 11th day of Dec., 1845, and that a company was formed and did build and operate a railroad from Nashville, Tennessee, to Chattanooga, Tennessee, passing through the State of Georgia and Alabama, and respondent here refers to the original charter and amendments and will produce the same in court.

Respondent admits that the Nashville & Northwestern Railroad Company was chartered by the General Assembly of the State of Tennessee, by an act passed 22d day of January, 1852, and respondent also refers to its charter and amendment, and will produce the same on the hearing.

Respondent admits that a company was formed under said charter and built a railroad from Nashville, Tennessee, to Hickman, Kentucky.

Respondent says that the last-named railroad was sold to the Nashville and Chattanooga Railroad Company upon a bill filed
19 by the State of Tennessee to enforce a lien in its favor upon the property of said company, but said sale carried with it the charter of said Nashville and Northwestern railroad.

Respondent admits that afterwards, on the — day of ——, 18—, said two roads were consolidated by purchase and made into one system with one and the same officers and board of directors, and the name of the whole was changed to that of the Nashville, Chattanooga and St. Louis railway, and the capital stock of said company consists of $6,670,331, which has sold in the markets of the country at various prices.

Respondent says that nearly all of this stock is owned and held by non-residents of the State of Tennessee and has been so owned and held for many years. Very little of it has been owned or held in Tennessee for many years past; and respondent does not know who owns any of said stock, but is informed that the Louisville and Nashville Railroad Company is the owner of a large amount thereof, and that G. M. Fogg, a resident and citizen of Tennessee, owns a few shares of said stock.

20 Respondent says that he has no means of knowing who owns any of said stock, and has no means of compelling the persons having charge of the stock books, showing ownership and transfer of stock, to exhibit them to him.

Respondent admits that the chief office of said company is at Nashvihe.

Respondent says that he is not the assessor of property for taxation under the laws of Tennessee. Regular assessors have always been appointed by the authority of law and are now in existence, and that it is only made his duty to assess property in such cases

which by mistake the regular assessor has failed to assess for taxation.

Respondent says that he is collector of taxes for the county of Davidson and does not find any such assessments of the stock of this company upon his books, and he believes that it has never been assessed for taxes at any time.

Respondent admits that by the 38th and 36 sections of said original charters the capital stock of said companies are forever exempt from taxation. What this exemption covers respondent does not know, but submits to the court.

21 Respondent says that the original stock in the Nashville and Northwestern railroad was never of any value, and by the sale was totally wiped out. That the original stock in the Nashville and Chattanooga railroad was before the union of the two roads of little value, and he does not know the amount thereof, and that soon after the union of the two properties was — and lost, and the stock which is now outstanding was made and issued in the year 18—.

Respondents says that he is informed that the charters of said companies forbid the assessment and taxation of the stock aforesaid.

Respondent says that he is informed that the shares of non-residents of the State cannot be assessed and taxed in the State of Tennessee.

Respondent says that he is informed that said stock is based upon the roads which lie in the States of Tennessee, Georgia, Alabama, and Kentucky; how much in each State he does not know. And is informed that Tennessee has no power to tax property beyond her territorial limits.

Respondent says that if the petition of plaintiff seeks to compel him to assess this stock retrospectively and back for several years that it cannot be done by him, from any information within

22 his reach, or of by law he can avail himself; that the transfer of the stock has taken place almost daily during the last few years, and its sales are now and have been daily reported upon the New York boards for several years, and the assignment of the certificates carry the legal title to the property whether the transfer is made or not upon the books of the company, and that all property is assessed to the persons owning the same upon the — day —— of each year. Besides, respondent says that each and all the acts of the General Assembly directing assessments to be made, and fixing the rates of taxation for each year, have been repealed and are not now in existence. And he is informed that the repeal of these acts took away all power to act under them, and they became as though they had never existed.

Respondent says that the original stock of the Nashville & Chattanooga R. R. Co. was two millions, five hundred thousand of which was owned and held by the city of Nashville, and five hundred thousand by the city of Charleston, South Carolina; and this two millions of original stock after the purchase of the Nashville

23 and Northwestern railroad was increased to the present sum by permission of the Legislature so that it would represent

the value of the property purchased, and other accretions since that time, it has purchase- three other lateral railroads under judicial sales, viz: The Tennessee & Pacific, running through the counties of Davidson and Wilson; the Winchester and Alabama, lying in the counties of Franklin and Lincoln, and the McMinnville and Manchester, lying in the counties of Warren, Coffee, and White—all counties in the State of Tennessee.

And now respondent submits to the court his duties in the premises.

EAST AND FOGG, *Sol'rs.*

On the 22d day of May, 1884, stipulations were filed in words and figures as follows, to wit:

STATE OF TENNESSEE & others
vs.
GEO. K. WHITWORTH, Trustee, &c.

The following stipulation is made between the counsel for the plaintiffs and the defendant:

1. The Nashville & Chattanooga Railroad Company was
24 chartered on the 11th December, 1845, by an act of General Assembly of the State of Tennessee. The company was not fully organized until the — day of ——, 1848, when a board of directors and other officers were elected and qualified. On the 11th April, 1848, the city council of Charleston, S. C., passed a resolution to subscribe stock in the Nashville and Chattanooga R. R. Co. to the amount of five hundred thousand (500,000) dollars. At the same time the Georgia Railroad and Banking Company, a corporation chartered by the State of Georgia, proposed to subscribe two hundred and fifty thousand (250,000) dollars in the stock of the N. & C. R. R. Co.

On the 25 April, 1848, the above propositions of the city of Charleston and the Georgia Railroad and Banking Company were laid before the directors of the Nashville & Chattanooga R. R. Co. and accepted by said board. These subscriptions of stock by the city of Charleston and the Georgia Railroad and Banking Company were the first subscription- made by non-residents of the State of Tennessee. The resolution of the city of Charleston and the
25 proposition of the Georgia Railroad and Banking Company and the action of the board of directors thereon are set out in a compilation of the charter, amendment, &c., of the Nashville & Chattanooga R. R. Co. on pages 42, 43, 44, 45, which may be read and used as evidence on the hearing of this cause, as also may all or any part of the original charter or amendments as set out in said compilation, both of the Nashville and Chattanooga R. R. Company and the Nashville and Northwestern R. R. Company.

It is further stipulated and agreed that the system of railroads known as the Nashville, Chattanooga and St. Louis railway is composed of the following roads, viz: Nashville & Chattanooga, running through the States of Georgia and Alabama to Chattanooga, Tennessee; the Nashville & Northwestern, commencing at Nashville

and terminating in the State of Kentucky, at Hickman; the Winchester and Alabama railroad, lying in the counties of Franklin and Lincoln; the McMinnville & Manchester, lying in the counties of Coffee and Warren, and the Tennessee & Pacific, lying in the
26 counties of Davidson and Wilson. That the entire capital stock is six millions six hundred and seventy thousand dollars divided into shares of $25.00, and by far the greater part is owned by non-residents of the State.

It is further stipulated that Geo. K. Whitworth is collector of revenue for the county of Davidson, State of Tennessee, and that there are now and have been at all times assessors, and that the stock of this company has never been assessed.

It is further stipulated that each of said roads retains all the provisions of its original charter.

It is further stipulated that the defendant has its principal office and place of business in Nashville, Tennessee, and that the books of said corporations will show who were the shareholders of said stock at each meeting of the stockholders, and also who appeared to be its owners upon the day of each year when taxes are to be assessed as provided by law.

On the — day of Aug., 1884, stipulations filed in words and figures following, to wit:

27 In the Circuit Court of the United States for the Middle Middle District of Tennessee, at Nashville.

STATE OF TENNESSEE
vs.
GEO. K. WHITWORTH, Trustee, &c.

This suit having been revived against —— Sneed, the successor in office of the said Whitworth, trustee, upon the trial thereof before the circuit court the following case was agreed between the plaintiff and the defendant, by their respective attorneys, to be subject to the opinion of the court as to the law applicable thereto:

It is stipulated, in addition to the stipulations made at the hearing, that the revenue act of the State of Tennessee of 1873, and all subsequent revenue acts contain the following sections, among others: "That the basis of all assessments shall be as follows:

* * * * * * *

"4th. To assess the property in the district or ward in which it lies or is known to be at the time of the assessment, but all stock in banks, banking associations, or other corporations or joint stock companies shall be assessed in the place, town, ward, or district in which
28 such banks, banking associations, or other corporations are located.

"SEC. 7. But personal property shall be assessed under the following heads: 1. The actual stock in such bank or banking, insurance, or other stock company or corporation invested in business. 5. All bonds, stock, and other like securities other than such as are exempt from taxation by the laws of the United States or of this State."

Then follows the provisions of the act of March 1st, 1869, relative to the taxation of the shares of stock "in any bank or banking association or other joint stock company or corporation," which has been carried forward in every revenue act adopted since its passage and is now the law of Tenn.

The act of 1873 and subsequent acts also contain the following section, which was not in the act of 1869:

"That this act shall not be so construed and shall not so operate as to exonerate or release from taxation any company or corporation whose charter exempts stock and shares thereof from taxation, but it is hereby enacted that in all cases where such stock is exempted such company or corporation shall be assessed in such way as may be lawful."

29 It is further stipulated that the following have been the rates of taxation for State purposes. For 1869, sixty cents per $100; for 1870, twenty cents; 1871, sixty cents.

It is further stipulated that the first section of the act of December 12th, 1871, fixed the rate of taxation for State purposes at forty cents per $100 for the year 1872 and all subsequent years, and this section was specifically repealed by the act of March 21st, 1877.

The act of March 22d, 1877, fixed the rate of taxation for State purposes at ten cents per $100 for 1877 and 1878, and this rate was continued by subsequent Legislatures until April 7th, 1881, at which time the Legislature fixed the rate at forty cents per $100.

By an act passed May 20th, 1882, the act of April 7th, 1881, was amended by making the rate thirty cents per $100 for 1882, and this continued until the act of March 30th, 1883, which fixed the rate at forty cents per $100 for 1883 and all subsequent years, which act is now in force.

30 It is further stipulated that the rate of taxation for county and city purposes for the county of Davidson and city of Nashville may be taken from the various resolutions of the county court and acts of the mayor and city council of Nashville as fixed by them respectively for the years during which the court may adjudge the property in question subject to taxation by these municipalities.

Upon the foregoing agreed statements of facts and the petition and answer filed in the cause, it is submitted to the court without the intervention of a jury upon the motion of plaintiff for a peremptory mandamus upon the defendant to assess the shares of stock in the Nashville, Chattanooga & St. Louis railway for taxation under the laws of Tennessee as prescribed for the assessment and taxation of the shares of stock in other joint stock companies or corporations.

On the 4th day of August, 1884, in the circuit court of the
31 United States for the middle district of Tennessee, at Nashville—present, Hon'l. D. M. Key, judge, &c.—the following proceedings were had:

Minute Entry.

STATE OF TENNESSEE
vs.
GEO. K. WHITWORTH, Trustee, &c. } No. 2664. (& 4 other cases.)

These five cases were argued by counsel and taken under advisement by the court until the next term.

On the 29th day of December, 1884, the following proceedings were had:

Present: Same judge.

STATE OF TENNESSEE
vs.
GEO. K. WHITWORTH, Tr., &c. } No. 2664.

This cause having been by agreement of counsel revived in the name of T. H. Sneed, the successor in office of said Whitworth, Trustee, came on to be heard on the 29th day of Dec., 1884, before the Hon'l. D. M. Key, judge, &c., holding the circuit court of the United States for the middle district of Tennessee, at Nashville, and a jury having been waived by the parties, the cause was heard
32 by the court upon the agreed state of facts, which statement is hereby made a part of the record in this cause, and the petition and answer filed, and the court being of opinion that the defendant cannot lawfully assess for taxation the shares of stock in the Nashville, Chattanooga & St. Louis railway for the reason that said shares are exempt from taxation by the terms of its charter, doth deny the application for a peremptory writ of mandamus and direct that the petition therefor be dismissed, to which action of the court the plaintiff then and there excepted.

33 *Opinion of the Court.*

Mandamus.

MATTHEWS, *Justice:*

This proceeding in mandamus was commenced by the State of Tennessee, on its own behalf and upon the relation of Davidson county and the city of Nashville, in the circuit court of that county to compel the defendant, Trustee of said county, to assess for taxation, in favor of the State, county, and city, the shares of stock owned by individual shareholders in the Nashville, Chattanooga and St. Louis Railway Company. The alleged duty required of the defendant is imposed by statute of the State—an act of March 12th, 1879, as amended by an act of March 28th, 1883—whereby all collectors of taxes, the defendant, as Trustee, being one, are made "assessors to assess all property which, by mistake of law or fact, whether the omission be for the particular year or years; and it is hereby made the duty of such collectors, in all cases where property has not been assessed, but on which taxes ought to be paid by law, to immediately assess the same and proceed to collect the taxes."

The property sought now to be subjected to assessment
34 for taxation, it is claimed, is within the purview of the act of March 1st, 1869, which has been carried forward into every revenue act since passed, and is still in force, as follows.

"No tax shall hereafter be assessed upon the capital stock of any bank or banking association or other joint stock company organized under the authority of this State or of the United States, but the stockholders in such banks and banking associations or other corporations shall be assessed and taxed upon the value of their shares and stock therein. Said shares shall be included in the valuation of the personal property of such stockholders in the assessment of State, county, or municipal taxes at the place, town, or ward, or district where such bank, banking association, or other corporation is located, and not elsewhere, whether the said stockholder- reside in said place, town, ward, or district or not, but not at a greater rate than is assessed upon the moneyed capital in the hands of individuals in the State: And provided further, That nothing herein contained shall be held or construed to exempt from taxation
35 the real estate held or owned by such bank or banking association or other corporation, but the same shall be subject to State, county, municipal, and other taxation, and in the same manner as other real estate is taxed."

It was decided by the supreme court of Tennessee that this section included the case of taxing the shares of stock in a gas-light company, upon such grounds as also to embrace the case of taxing shares of stock in railroad companies. Bedford *v.* Mayor of Nashville, 7 Heisk., 409. The act of 1869 makes the tax a lien on the shares of stock subject to assessment, authorizes the collection of the tax from the avails of their sale, and makes it the duty of the corporation to retain all dividends belonging to such stockholder so far as necessary to pay the taxes assessed upon his shares. There is much in the statute that seems inappropriate to the case of corporations other than banks and similar associations, where capital is employed in the form of money and securities; but, in view of the decision of the supreme court of the State, already referred to, no question is raised on the point. The case, originally instituted in a State court,
36 was removed to this court on the ground that its decision necessarily involved a question arising under the Constitution of the United States, it being claimed on the part of the defendant that the shares of stock sought to be subjected to assessment for taxation were exempt by a contract with the State, contained in the charter of the Nashville, Chattanooga & St. Louis Railroad Company. It is now claimed on behalf of the State that it has the right to have the shares of stock in this corporation assessed for taxes by the tax collector of Davidson county, where it has its principal place of business, as the property of the holders at the time of the filing of the petition, for as many years as the books of the corporation show the stock to have been continuously owned by them since the passage of the act of 1869, and that these taxes, when assessed, become a lien upon the stock, for the payment of which the corporation itself is responsible to the extent of any dividends declared or settlements

had by it with the shareholders since the filing of the petition; but when the stock has changed hands during years for which it was liable for taxation, it is not insisted that it is now to be as-
37 sessed for such omitted taxes, so as to hold either the stock or the present owner liable therefor, nor that the assessment can go back prior to the year 1875, at which time, as appears by the answer, the old stock was surrendered, and the present stock created and issued.

The act to incorporate the Nashville & Chattanooga Railroad Company was passed Dec. 11, 1845. The thirty-eighth section of that act is as follows: "The capital stock of said company shall be forever exempt from taxation, and the road, with all its fixtures and appurtenances, including workshops, warehouses, and vehicles of transportation, shall be exempt from taxation for the period of twenty years from the completion of the road, and no longer."

A provision in the same language was contained in the charter of the Nashville & Northwestern Railroad Company, all of whose property and road, including its rights and franchises, and the foregoing exemption, it is admitted, passed by a judicial sale to the Nashville & Chattanooga Railroad Company. The name of the latter was changed to the Nashville, Chattanooga & St. Louis Railway Company, and to enable it to pay for this and other roads acquired
38 by it this company was authorized to increase its capital stock to the present amount of $6,670,331.20, divided into shares of $25 each. It is claimed for the defendant in this proceeding that the perpetual exemption of the capital stock of the company from taxation covers the individual interest therein of the stockholders, the attempted violation of which is repugnant to that clause of the Constitution of the United States which forbids the States from passing laws impairing the obligation of contracts. The issue presented is one of the construction of the clause of the charter above quoted; the question being, what is the legislative intent embodied in the language of that exemption? It must be admitted, at the outset, that it was competent for the Legislature of the State to distinguish between the interest of a corporate body in its capital, or capital stock, and that of the individual shareholder, as separate subjects of taxation, so that one may be taxed and the other exempt, or both governed by the same rule of taxation or exemption, at the discretion of the legislature. It was accordingly held by the Supreme Court of Tennessee, in the case of Union Bank *v.* State, 9 Yerg., 490,
39 that a provision in the charter of a bank, "that in consideration of the privileges granted by the charter the bank agrees to pay to the State annually one-half of one per cent. on the amount of the capital stock paid in by the stockholders other than the State," operated by way of contract to restrict the State in taxing the corporation in respect of its capital stock to the rate mentioned, but not to prohibit the State from a separate and additional taxation of each stockholder upon his individual interest as a stockholder. In that case it will be observed, however, that the language of the charter did not exempt from taxation, in whole or in part, the capital stock of the company as a subject of taxation without regard

to its ownership, but was an agreement directly and expressly with the corporation itself, as distinct from its shareholders as to a tax to be paid by the corporate body, measured by a rate upon the amount of its capital stock paid in. An exemption was thereby implied as extended to the corporation not to tax it on that account at any greater rate; but that exemption, it was held, could not be
40 judicially extended so as to embrace the case of individual stockholders chargeable in respect to their separate interests as such.

In that respect that case differs from the present, for here the exemption is not of a person, but of a thing; it is not that no tax shall be required of the corporation in respect to its capital stock, but that the capital stock itself shall be forever exempt from taxation—that is, shall not be regarded as a lawful basis or subject of taxation—thus removing the thing itself from the list of taxables under any authority deriving its powers from the State. This exemption is not limited to the interest of the corporation in its capital stock by calling it "the capital stock of the company," as though this was intended to convey the idea of property and ownership in the company of its stock. It is the capital stock of the company, not as belonging to the corporation as property, but merely as designating and describing it as the capital stock authorized by that act, and to be known as the capital stock of the particular company by the name it bears. Nor can the exemption be limited by the idea that the clause is in a contract between
41 the State and corporation as such, and not with the natural persons composing it as stockholders. That supposition, in the first place, is not accurate. The contract of the charter is with all who become parties to it by accepting its proposals, as all do who subscribe to the capital stock it authorizes upon the terms and conditions expressed and implied. But even were it, as claimed, technically a contract between the State and the corporate body only, yet that would not change the meaning of the clause in question, which does not refer to persons, but operates distinctly upon the very things it describes. But that the stockholders are the real parties to the contract appears not less from the whole purview of the statute as from the particular provisions of the thirty-fourth section, relating to amendments to the charter, which, it is provided, when accepted and adopted unanimously by the president and directors, "shall be obligatory on the stockholders and not otherwise."

A clause of exemption in a railroad charter identical with that under discussion here was considered and construed by the
42 Supreme Court of the United States in the case of Railroad Co's *vs.* Gaines, 97 U. S., 697. It was there contended on the part of the railroad company that the capital stock of the company exempted not only was the capital which belonged to the corporation, but consisted of the very property into which the original capital contributed by individual subscribers had been converted by investment, and so embraced that much, at least, of the road, fixtures, etc., which represented subscribed capital as distinct from borrowed

capital, although it was by the express words of the clause to be exempt from the taxation only for 20 years from the completion of the road. But this view was not adopted, the court holding that the property expressed to be exempted for 20 years only could not be a part of that which was exempted forever. It follows, therefore, necessarily that the capital stock of the company which is not subject to taxation is a distinct thing altogether from any part of the property belonging to the company, whether exempt from taxation for a limited period or not at all. It does not include the franchises of the company to be a corporation, or to make and operate a railroad; for, in the first place, the phrase is not an appropriate one to convey such a meaning, and, in the next, the value of the franchises of the company necessarily is included in the value of the property of the company used for corporate purposes, as that use cannot be separated from the property used in any rational estimate of the value.

What, then, remains of possible subjects to which the exemption may be applied? For we are not at liberty to suppose the exemption has nothing on which it can take effect, and is therefore void and without meaning. It is suggested in argument as an alternative meaning that the exemption is a stipulation merely that the corporation shall not be taxed upon the money paid in, or capital stock, at its full nominal value, but, as an encouragement to investment only upon the property acquired by the company at its value as ascertained from time to time, as other similar property may be valued for purposes of taxation, and not upon that until after the lapse of 20 years. But that assumes that the object of the exemption is the corporation, whereas the thing exempted is the capital stock itself; and the natural reading of it is that as to the capital employed by the company for corporate purposes in the form of its road and fixtures, &c., that shall be exempt for 20 years; and as to the capital stock itself held and owned by individual subscribers, who have incurred the risk of investment, and depend on the success of the enterprise for the return of profits, it shall be forever exempt from taxation.

This conclusion seems to be required by the decision of the Supreme Court of the United States in the case of Farrington *v.* Tennessee, 95 U. S., 679. In that case the bank charter provided that the bank "shall pay to the State an annual tax of one-half of one per cent. on each share of the capital stock subscribed, which shall be in lieu of all other taxes." It was held that the words "in lieu of all other taxes," as thus used, meant in lieu of all other taxes that might be imposed on that subject of taxation, viz., the shares of the capital stock, and that accordingly it excluded a tax on those shares assessed upon them against the individual shareholder as his property. Mr. Justice Swayne, delivering the opinion of the Court, said:

"There is no question before us as to the tax imposed on the shares by the charter, but the State has, by her revenue laws, imposed another and an additional tax on these same shares. This is one of those 'other taxes' which it had stipulated to forego. The identity

of the thing doubly taxed is not affected by the fact that in one case the tax is to be paid vicariously by the bank, and in the other by the owner of the share himself. The thing thus taxed is still the same, and the second tax is expressly forbidden by the contract of the parties. After the most careful consideration we can come to no other conclusion. Such, we think, must have been the understanding and intent of the parties when the charter was granted and the bank organized. Any other view would ignore the covenant that the tax specified should be 'in lieu of all other taxes;' it would
46 blot those terms from the contract, and construe it as if they were not a part of it."

The present case is even stronger than that for the application of the exemption, for in the case cited the tax imposed was upon the corporation itself, and to be paid by it. And it might well have been argued with plausibility, as in fact it was, that it was to be in lieu only of all other taxes sought, in respect thereof, to be charged against the corporation, leaving the interest of the individual shareholders unaffected by the stipulation. But here no such consideration applies, for here the exemption is absolute, not in favor of any particular person, but without discrimination and without condition operating upon the thing itself, known as capital stock of the company, however owned or held, and inhering in it forever. It is true, the word "shares" is not used; and it may be said that the reference is to the aggregate fund paid in and originally transferred to the company; but there is no such actual aggregate fund remaining
47 uninvested, and *and* we have seen that it does not possibly include the property of the company resulting from its investment. The capital stock of the company, therefore, has no legal existence, except as an aggregate of the shares owned and held as individual property by the separate stockholders. Each share is a part of the whole, and as the whole is exempt from taxation it follows that each part or share must also be exempt.

This conclusion is strongly re-enforced by the phraseology of other parts of the statute in instances too numerous to specify; more strongly still by a practical construction of this charter and the revenue acts of the State during the whole period of their coexistence, which has never drawn in question the exemption claimed for the stockholders of this corporation until the filing of the present petition.

Judgment will be rendered for the defendant, dismissing the petition.

48 *Appeal Bond.*

Circuit Court of the United States for the Middle District of Tennessee.

STATE OF TENNESSEE

vs.

THOMAS H. SNEED, Successor in Office of Geo. K. Whitworth, Trustee of Davidson County.

Know all men by these presents that we, J. W. Allen and Leon

Trousdale, of the county of Davidson, State of Tennessee, are held and firmly bound unto the said T. H. Sneed, Trustee, in the sum of five hundred dollars, to be paid to the said Sneed, Trustee, or his successors in office. Witness our hands, this 29th day of Dec., 1884.

Whereas lately, at a term of the United States circuit court for the middle district of Tennessee, in a suit depending in said court between The State of Tennessee and others, as plaintiffs, and T. H. Sneed, successor in office of Geo. K. Whitworth, Trustee of Davidson County, Tennessee, as defendant, judgment was rendered against the said plaintiffs directing the dismissal of said petition and in
49 favor of said defendant for the costs of this suit; and the said plaintiffs having obtained a writ of error to remove said cause to the Supreme Court of the United States, and filed a transcript of the record of said court in said cause in the office of the clerk of the Supreme Court of the United States to reverse the judgment in the aforesaid suit:

Now, therefore, the condition of this obligation is such that if the said State of Tennessee, County of Davidson & City of Nashville shall prosecute said writ of error to effect, an- answer all damages and costs if they shall fail to make their plea good, then the above obligation to be void; else to remain in full force & effect.

J. W. ALLEN.
LEON TROUSDALE, Jr.

Approved.
D. M. KEY,
U. S. Dist. Judge.

Personally appeared before me, N. Baxter, clerk of the supreme court, the undersigned, J. W. Allen and Leon Trousdale, Jr.,
50 and made oath that they, and each of them, are worth the amount of said bond.

Nashville, July 28th, '85.

J. W. ALLEN.
LEON TROUSDALE, Jr.

Sworn to & subscribed before me, this 28th July, 1885.
NATHANIEL BAXTER,
Clerk S. C. Tenn.

51 United States of America,
Middle District of Tennessee:

I, Lewis T. Baxter, clerk of the circuit court of the United States for the middle district of Tennessee, do hereby certify that the foregoing is a full and complete transcript of the record and proceedings in the case of The State of Tennessee *versus* Geo. K. Whitworth, Trustee, &c., as the same now remain of record and on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Nashville, in said district, this the 28th day

of July, A. D. 1885, and of the Independence of the United States the 110 year.

[Seal Circuit Court U. S., Middle District Tenn.]

LEWIS T. BAXTER, *Clerk*,
By CHAS. NASH, *Dep'y Clk.*

All costs (including cost of transcript, $13.75) paid by P. P. Pickard, comptroller of State of Tenn.

Total cost paid, $60.40.

LEWIS T. BAXTER, *Clk*,
By CHAS. NASH, *D. C.*

52 THE UNITED STATES OF AMERICA, *ss:*

To George K. Whitworth, Trustee of Davidson county, Tennessee, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the middle district of Tennessee, wherein The State of Tennessee is plaintiff in error and George K. Whitworth, Trustee, is defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

53 Witness the Hon. D. M. Key, district judge of the United States for the middle district of Tennessee, at the city of Nashville, in said district, this the 29 day of December, 1884, and of the Independence of the United States the 109th year.

D. M. KEY, *Judge.*

We accept service of the above citation this the 29 day of December, 1884.

EAST & FLAGG,
Of Counsel and Attorneys for the Defendant.

54 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States of America for the middle district of Tennessee, Greeting:

Because in the record and proceedings, as also in the rendition of judgment in a plea which is in the said circuit court of the United States of America for the middle district of Tennessee before you, between The State of Tennessee, plaintiff, and Geo. K. Whitworth, Trustee, defendant, a manifest error hath happened, to the great damage of the said State of Tennessee, as by the complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judg-

55 ment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid,

with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error that of right and according to law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 29th day of Dec'r, A. D. 1884, and of the Independence of the United States the 109th year.

LEWIS T. BAXTER,

Clerk U. S. Circuit Court for the Middle District of Tennessee.

Endorsed on cover: M. Tennessee, C. C. U. S. No. 935. The State of Tennessee, plaintiff in error, *vs.* George K. Whitworth, Trustee of Davidson county, Tennessee. Filed September 10, 1885.

117-129

Supreme Court of the United States.

OCTOBER TERM, 1885.

No. 934.

THE STATE OF TENNESSEE, PLAINTIFF IN ERROR,

vs.

GEO. K. WHITWORTH, TRUSTEE OF DAVIDSON COUNTY, TENNESSEE.

MOTION TO ADVANCE.

The State of Tennessee, plaintiff in error, through her attorney general, B. J. Lea, and S. Watson, special counsel, moves the court to advance this cause upon the docket and hear it in preference to any civil cause pending in this court between private parties, at a stated time during the present term.

The motion is based upon Section 949 of the Revised Statutes, which is as follows:

"Where a State is a party, or the execution of the revenue laws of a State is enjoined or stayed in any suit in a court of the United States, such State, or the party claiming under the revenue laws of a State, the execution whereof is enjoined or stayed, shall be entitled, on showing sufficient cause, to have the cause heard at any time after it is docketed, in preference to any civil cause pending in such court between private parties."

The plaintiff in error begs leave to submit, in connection with this motion the accompanying brief and statement giving the reasons why the cause should be so advanced.

B. J. LEA,
Attorney General for the State of Tennessee.

S. WATSON,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

THE STATE OF TENNESSEE, Plaintiff in Error,
vs.
GEO. K. WHITWORTH, Trustee of Davidson County. } No. 934.

To ED. BAXTER, Esq., *Attorney for Defendant in Error.*

SIR: Take notice that on Monday, December 14, 1885, the State of Tennessee will, through her counsel, move to advance this cause upon the docket and have it heard in preference to any civil cause pending in said court, at a stated time during the present term.

The motion will be based upon Section 949 of the Revised Statutes, which is as follows:

"Where a State is a party, or the execution of the revenue laws of a State is enjoined or stayed in any suit in a court of the United States, such State, or the party claiming under the revenue laws of a State, the execution whereof is enjoined or stayed, shall be entitled, on showing sufficient cause, to have the cause heard at any time after it is docketed, in preference to any civil cause pending in such court between private parties."

B. J. LEA,
Attorney General for the State of Tennessee,
S. A. CHAMPION,
S. WATSON,
Special Counsel.

Service of this notice is hereby acknowledged, and defendant in error consents that the cause be advanced.

ED. BAXTER,
Solicitor for Defendant.

November 24th, 1885.

14)—129 & 139

Supreme Court of the United States.

OCTOBER TERM, 1885.

No. 935.

THE STATE OF TENNESSEE, PLAINTIFF IN ERROR,

vs.

GEO. K. WHITWORTH, TRUSTEE OF DAVIDSON COUNTY, TENNESSEE.

MOTION TO ADVANCE.

The State of Tennessee, through her attorney general, B. J. Lea, and S. Watson, special counsel, moves the court to advance this cause upon the docket and hear it in preference to any civil cause pending in this court between private parties, at a stated time during the present term.

The motion is based upon Section 949 of the Revised Statutes, which is as follows:

"Where a State is a party, or the execution of the revenue laws of a State is enjoined or stayed in any suit in a court of the United States, such State, or the party claiming under the revenue laws of a State, the execution whereof is enjoined or stayed, shall be entitled, on showing sufficient cause, to have the cause heard at any time after it is docketed, in preference to any civil cause pending in such court between private parties."

The plaintiff in error begs leave to submit, in connection with this motion the accompanying brief and statement giving the reasons why the cause should be advanced.

B. J. LEA,
Attorney General for the State of Tennessee.
S. WATSON,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

THE STATE OF TENNESSEE, Plaintiff in Error,
vs.
GEO. K. WHITWORTH, Trustee of Davidson County,
No. 935.

To Messrs. East and Fogg, *Attorneys for the Defendant.*

SIRS: Take notice that on Monday, December 14, 1885, the State of Tennessee will, through her counsel, move to advance this cause upon the docket and have it heard in preference to any civil cause pending in said court, at a stated time during the present term.

The motion will be based upon Section 949 of the Revised Statutes, which is as follows:

"Where a State is a party, or the execution of the revenue laws of a State is enjoined or stayed in any suit in a court of the United States, such State, or the party claiming under the revenue laws of a State, the execution whereof is enjoined or stayed, shall be entitled, on showing sufficient cause, to have the cause heard at any time after it is docketed, in preference to any civil cause pending in such court between private parties."

B. J. LEA,
Attorney General for the State of Tennessee,
S. A. CHAMPION,
S. WATSON,
Special Counsel for the State.

We acknowledge service of this notice but oppose the motion.

EAST & FOGG,
Atty's for Defendant in Error.

November 24th, 1885.

147-129 & 130

JAMES H. MCKENNEY
CLERK

Supreme Court of the United States.

Nos. 934 and 935.

THE STATE OF TENNESSEE, PLAINTIFF IN ERROR,

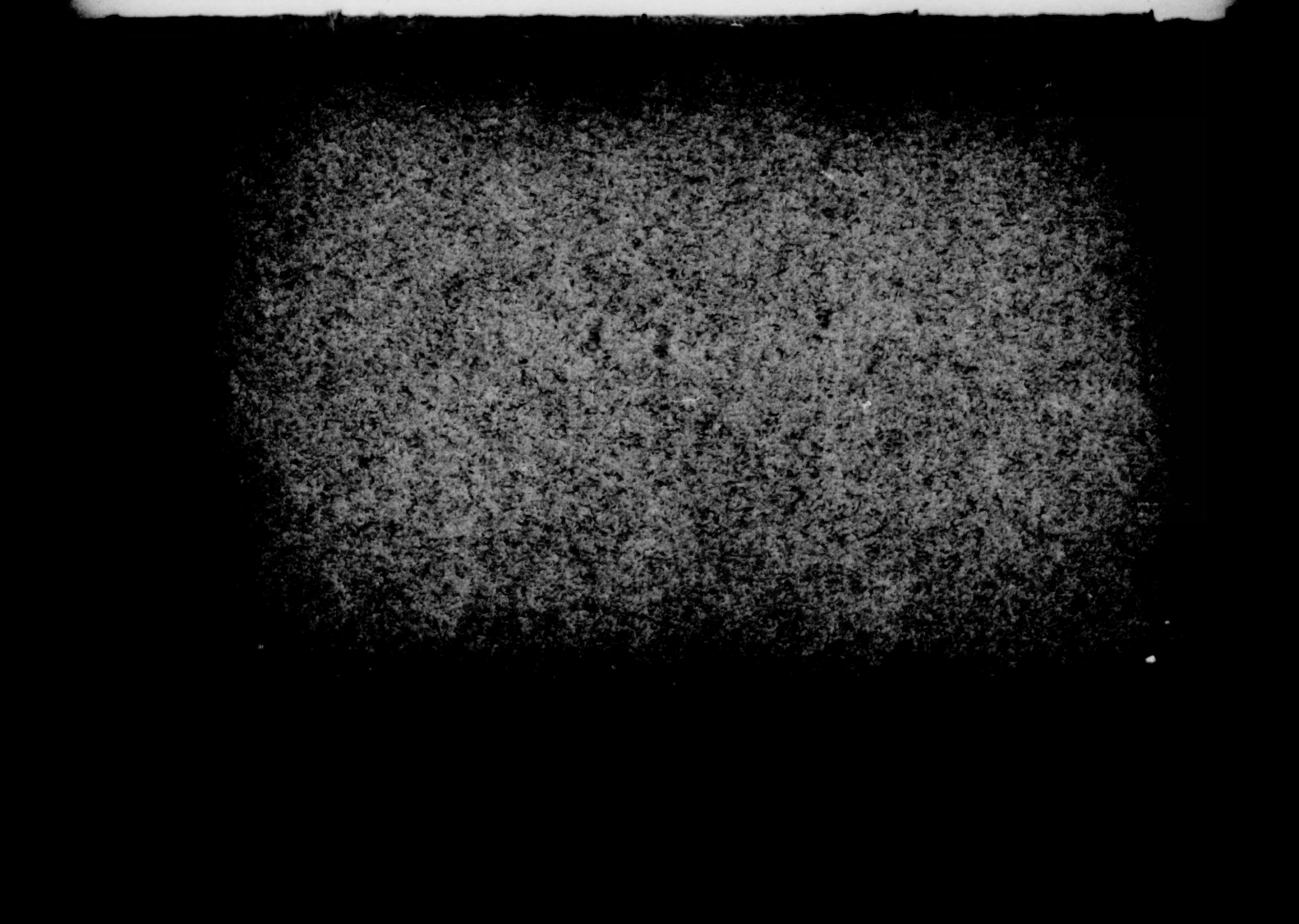
vs.

GEO. K. WHITWORTH, TRUSTEE OF DAVIDSON COUNTY.

BRIEF FOR PLAINTIFF IN ERROR ON MOTION TO ADVANCE.

B. J. LEA,
Attorney General for the State of Tennessee.
J. W. BAKER,
S. A. CHAMPION, and
S. WATSON, *Of Counsel.*

JUDD & DETWEILER, PRINTERS.



Supreme Court of the United States.

Nos. 934 and 935.

THE STATE OF TENNESSEE, PLAINTIFF IN ERROR,

vs.

GEO. K. WHITWORTH, TRUSTEE OF DAVIDSON COUNTY.

BRIEF FOR PLAINTIFF IN ERROR ON MOTION TO ADVANCE.

STATEMENT.

These suits were begun in the circuit court of Davidson county, Tennessee, by petitions filed on July 30, 1883. They are applications by the State of Tennessee on her own behalf and on the relation of the county of Davidson and city of Nashville, for writs of mandamus to compel the defendant to assess for taxation the individual shares of stock in the Nashville, Chattanooga and St. Louis railway and the Nashville and Decatur Railroad Company.

The causes were removed to the United States circuit court for the middle district of Tennessee, and final judgments rendered in that court against the plaintiff in December, 1884. Thereupon the plaintiff brought the causes to this court by writs of error.

The State of Tennessee now moves to have the causes advanced on the docket and heard during the present term.

The revenue law of Tennessee declares that no tax shall be assessed upon the capital stock of corporations, but that the stockholders shall be assessed and taxed upon the value of their shares of stock therein. (Act of March 1, 1869. See No. 935, page 13, for language of the act.)

The defendant is the proper officer to make the assessment, but declines to do so upon the ground that the shares of stock are exempt from taxation by the terms of the charters of the respective companies.

The charter of the Nashville and Chattanooga Railroad Company (whose name is now the Nashville, Chattanooga, and St. Louis railway) provides thus:

"Section 38. The capital stock of said company shall be forever exempt from taxation, and the road, with all its fixtures and appurtenances, including the workshops, warehouses, and vehicles of transportation, shall be exempt from taxation for the period of twenty years, and no longer." (See No. 935, page 2.)

It is insisted for the plaintiff that the *shares* of stock are separate and distinct from the "capital stock," and hence not included within the charter exemption.

The Nashville and Decatur Railroad Company was formed by a consolidation of the Tennessee and Alabama, the Central Southern, and the Tennessee and Alabama Central Railroad Companies, the two first Tennessee corporations, the latter an Alabama corporation.

The charters of the Central Southern and the Tennessee and Alabama Railroad Companies confer upon said companies "all the rights, powers, and privileges" of the Nashville and Chattanooga Railroad Company.

The charter of the Nashville and Decatur Railroad Company (formed by the consolidation of the above-named com-

panies) declares "that the said Nashville and Decatur railroad shall, for its government, be entitled to all the rights and privileges and subject to all the restrictions and liabilities imposed upon the Nashville and Chattanooga Railroad Company," etc. (See defendant's answer, No. 934, pp. 8–14.)

It is insisted for the plaintiff, as in the case of the Nashville, Chattanooga and St. Louis railway, that the *shares* of stock are separate and distinct from the "capital stock," and hence not included in the charter exemption.

And, further, it is insisted that there is no exemption whatever contained in the charter of the Nashville and Decatur Railroad Company, for the reasons—

First. The conferring upon the Tennessee and Alabama and the Central Southern Railroad Companies the "rights and privileges" of the Nashville and Chattanooga Railroad Company does not carry any exemption from taxation contained in the charter of the Nashville and Chattanooga Railroad Company.

Second. The consolidation worked a dissolution of the old companies, thereby destroying whatever exemptions may have been conferred by their charters.

Third. The charter of the new company (Nashville and Decatur) confers only such "rights and privileges" of the Nashville and Chattanooga Railroad Company as may be necessary "for its government," thus expressly excluding any grant of exemption from taxation.

The circuit court decided against the plaintiff on all these points.

BRIEF.

The motion to advance these causes is based upon section 949 of the Revised Statutes, which is thus:

"Where a State is a party, or the execution of the revenue laws of a State is enjoined or stayed in any suit in a court of the United States, such State, or the party claiming under the revenue laws of a State the execution whereof is enjoined or stayed, shall be entitled, on showing sufficient cause, to have the cause heard at any time after it is docketed in preference to any civil cause pending in such court between private parties."

The State of Tennessee is a party to the record in both these causes, and therefore they come strictly within the first requisite of section 949. The State would be entitled to an early hearing of her suits upon "showing sufficient cause," although there were no questions involved as to the collection of her revenue.

But the causes come practically within the second requisite of the section, in that the subject-matter of the controversy is the revenue of the State, the collection of which will be delayed unless the causes are advanced upon the docket.

It is, perhaps, impossible that any suit can come strictly within both requisites of the section, for no judicial process enjoining the execution of a revenue law would run against the State, but against her officers.

The causes before the court come as nearly as possible within both requisites of the section, for the State is a party to the record, and the object of her litigation is the collection of her revenue.

The State commenced these suits in one of her own courts. If that court had retained jurisdiction and rendered its de-

cision at the time the decisions were made in the United States circuit court the causes would have been heard in the State supreme court at its December term, 1884, under Code, sec. 738: "In all cases motions or suits in favor of the State shall have precedence over other causes on the docket of any of the courts." The removal of the suits to the United States circuit court, and subsequently to this court, has delayed the hearing, and thereby hinders the State from enforcing her rights in the collection of her revenue.

There is "sufficient cause" for granting the motion to advance.

The amount of stock sought to be assessed for taxation in these suits is $8,026,000, viz: In the Nashville, Chattanooga and St. Louis Railway, $6,670,000 (No. 935, p. 10); in the Nashville and Decatur Railroad Company, $1,356,000 (No. 934, p. 3).

Moreover, there are other railroad companies in the State, the right to tax whose stock will be determined by the decisions in these causes. They are:

East Tennessee, Virginia and Georgia preferred stock	$16,500,000
Common	27,500,000
Memphis and Charleston	5,312,725
Tennessee Coal, Iron, and Railroad Company	3,000,000

The latter company has no charter exemption, but the shares of stock have never been assessed for taxation. A suit is pending in Memphis against the stockholders of the Memphis and Charleston Railroad Company, seeking to subject their shares to taxation, but it awaits the determination of these causes here. No suit has been brought against

the stockholders of the East Tennessee, Virginia and Georgia Railroad Company, but they claim an exemption from taxation. This company was formed in 1869 by a consolidation of the East Tennessee and Georgia and the East Tennessee and Virginia Railroad Companies. The charters of both companies contain sections similar to section 38 of the Nashville and Chattanooga Railroad Company.

The exemption clause in the charter of the Memphis and Charleston Railroad Company is similar to that of the Nashville and Chattanooga Railroad Company.

(See *Railroad Co.* v. *Gaines*, 97 U. S., 697, for the language of M. & C. charter.)

The total amount of the shares of stock, therefore, the taxation of which is involved directly and ultimately in the decision of these causes is $60,338,725

Under the laws of Tennessee this stock must be assessed at its actual, not nominal, value.

The following are approximately the present values of these shares of stock.

(See statement of Thomas S. Marr, marked Exhibit No. 1.)

N. C. & St. L. R. R., $6,670,000 @ 45 cts.	$3,001,500
N. & D. R. R., $1,356,000 @ 95 cts.	1,288,200
M. & C. R. R., $5,312,725 @ 35 cts.	1,859,453
Tenn. Coal R. R., $3,000,000 @ 25 cts.	750,000
East T., Va. & Ga. R. R.—	
Common, $27,500,000 @ 6 cts.	1,650,000
Preferred, $16,500,000 @ 12 cts.	1,980,000
Total	$10,529,153

It will thus be seen from the above statement that the whole amount of stock is nominally $60,338,725; actual value, $10,529,153.

That the hearing and decision of these causes at the present term are of vital importance to the State of Tennessee will be seen from an act of the General Assembly passed June 9th, 1885, authorizing the Funding Board to borrow money in order to meet the interest on the State debt. A copy of said act is annexed to this brief, marked *Exhibit A;* also from the following joint resolution approved March 10, 1885. (Acts, 1885, p. 318:)

"Whereas the cases of the State of Tennessee *vs.* Pullman Southern Car Company, and Pullman Southern Car Company *vs.* James N. Nolan, comptroller, and State of Tennessee *vs.* Geo. K. Whitworth, trustee, etc., are now pending in the Supreme Court of the United States at Washington, and are all causes involving the collection of revenue alleged to be due the State of Tennessee; therefore,

Be it resolved by the General Assembly of the State of Tennessee, That the attorney general of the State is hereby directed to present to the Supreme Court of the United States a request to advance all of said causes upon the docket, in order that they may be heard and disposed of as soon as practicable."

In the case of *Keith* vs. *Clark* (97 U. S., 454) this Court held that the State of Tennessee was obliged to receive for taxes the notes issued by the Bank of Tennessee subsequent to May 6, 1861, unless it could be shown that said notes had been issued in aid of the rebellion, and that the burden of proof was on the State to show that the notes had been so issued.

Upon a second trial the State court held that the notes were not issued in aid of the rebellion, and this decision was affirmed by this Court in *Clark* vs. *Keith* (106 U. S., 464) at the October term, 1882.

Thereupon the Legislature passed an act providing for the

funding of the notes into certificates, receivable for taxes and all dues to the State. Exhibit B contains the material sections of said act.

The receivability for taxes of the post notes and notes of a less denomination than $5, which were excluded from the act of 1883, was declared by the supreme court of Tennessee, and the Legislature in 1885 passed an act providing for the funding and receiving of these notes on the same terms as prescribed in the act of 1883.

Under the act of 1883 there have been funded into certificates $650,000 of these notes, and under the act of 1885 there will be funded at least $300,000 of post notes and notes under $5.

It will thus be seen that nearly $200,000 of the revenue of the State is receivable in these certificates, or about one-fifth of the total revenue.

The rate of taxation, including 10 cents for school purposes, is 40 cents on the $100. The revenue to be derived from the property sought to be assessed for taxation (directly and ultimately) in these cases will amount to at least $40,000 per annum.

It is clear, therefore, that the operations of the State government will be seriously embarrassed by the delay in the hearing of these causes until they are regularly reached on the docket.

In *Davenport City* vs. *Dows*, 15 Wall., 390, the court say: "Congress seems to have intended to give to the State the right to preference in hearing when itself a party to a cause pending in this court, and a like preference when the execution of the revenue laws of a State is enjoined or suspended to any party claiming under such laws. This preference is

given, plainly enough, because of the presumed importance of such cases to the administration and internal welfare of the States, and because of their dignity as equal members of the Union."

In *Ward* vs. *State of Maryland*, 12 Wall., 163, the motion to advance was refused, because not made in behalf of the State; and in *Miller* vs. *The State*, 12 Wall., 159, the motion was refused, because the suit involved private interests alone. The court say: "Although a suit be nominally by a State as the plaintiff, yet where the real plaintiffs are individuals, the court will not advance the hearing, even by consent of counsel on both sides." To the same effect *Sage* vs. *Central Railroad Company*, 93 U. S., 412.

In *Hoge* vs. *The Richmond and Danville R. R. Co.*, 93 U. S., 1, the execution of the revenue laws of the State was enjoined at the suit of a stockholder upon the ground that the property of the railroad company was exempt from taxation by the terms of its charter. The motion to advance was made by the attorney general of the State. The court refused the motion to advance, because "sufficient reason" therefor had not been shown.

The court say: "The injunction operates only upon the property of a single corporation. The value of the property or the amount of the revenue to be derived from it is not shown. No question affecting the power of the State to tax other property is involved. The only dispute is as to the liability of the property of this single owner to taxation. The actual amount in controversy may be, and probably is, much less than that in very many other cases waiting their turn to be heard in the regular call of our docket. No disputed principle of law affecting any other case is, so far as

we can discover from the record, presented for our determination." It is respectfully insisted that under the requirements of the ruling in this case the State of Tennessee has shown "sufficient reason" why her cases now before the court should be advanced and heard out of their regular order upon the docket.

It will be seen from the notices served upon the defendant's attorneys that the attorneys in the Nashville, Chattanooga and St. Louis railway case oppose the motion to advance, and the attorney in the Nashville and Decatur railroad case consents to the advancement of that case.

B. J. LEA,
Attorney General for the State of Tennessee.
J. W. BAKER,
S. A. CHAMPION, and
S. WATSON, *Of Counsel.*

EXHIBIT No. 1.

THOS. S. MARR, *President*.

NASHVILLE SAVINGS COMPANY BANKING HOUSE,
NASHVILLE, TENN., *Dec.* 4, 1885.

The Statement of Thos. S. Marr.

I am a banker and broker in the city of Nashville, and am acquainted with the market value of stocks.

The stock of the East Tennessee, Virginia and Georgia Railroad Company is worth—

Common stock	6 to 7 cents.
Preferred "	11 " 13 "
Nashville, Chattanooga and St. Louis	46 "
Memphis and Charleston	35 "
Nashville and Decatur	96 "
Tennessee Coal, Iron and Railroad Company.	33 "

THOS. S. MARR.

EXHIBIT A.

Chapter 3.

An act to effectuate the funding act of 1883, chapter 84, approved March 28, 1883, and to provide for the prompt payment of the interest coupons upon bonds funded and to be funded under said act by authorizing the funding board to borrow money therefor, and to repeal section 223 of Milliken & Vertrees' Code.

Whereas the decision of the supreme court of Tennessee declaring the State liable for post notes and bills of the denomination of one, two, and three dollars of the Bank of Tennessee increases the volume of indebtedness of the State at least $350,000; and

Whereas the extraordinary appropriations by the General Assembly at its regular session in aid of the charitable institutions of the State to the amount of $228,000, rendered necessary in the opinion of this General Assembly by the urgent needs of the unfortunate insane of the State; and

Whereas the Supreme Court of the United States has recently decided that the railroads of the State are not liable for the State bonds issued in aid of the railroads, thus unlocking from litigation from $12,000,000 to $15,000,000 of said bonds, and which may reasonably be expected to be funded in a short time; and

Whereas the large and unexpected demands upon the State may exhaust the funds of the treasury and cause a default in the payment of interest coupons on the bonds funded and which may be funded under the State debt settlement or funding act of 1883, hereinbefore referred to, unless provision is made therefor, and it being impossible now, for want of time, to levy and collect or collect taxes to meet the demands for the payment of interest coupons falling due July 1, 1885, on bonds already funded under said act and interest due January 1, 1884, July 1, 1884, January 1, 1885, and July 1, 1885, on bonds not yet funded; and

Whereas it is believed that the levy of thirty cents on the one hundred dollars for State purposes will, when collected, be ample to meet the said interest and to repay the moneys authorized to be borrowed for said purposes by this act, therefore—

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the funding board created under the act of the General Assembly to fund and settle the State debt, passed March 15, 1883, being chapter 84 of said acts of 1883, be, and is hereby, authorized and empowered to borrow such sum or sums of money in the name of the State as said board may deem necessary to supplement the funds in the State treasury for the purpose of promptly paying the interest due and to fall due upon the bonds funded under the said act of 1883, and those which may hereafter be funded under said act falling due July 1, 1885, and January 1, 1886; said money, when so borrowed, to be specially set apart for the payment of said interest coupons herein designated, and for no other purpose.

SEC. 2. *Be it further enacted*, That the said funding board shall, for all sums borrowed under the provisions of this act, execute the note or notes of the State, payable to the lender two years from date, and may bear interest not exceeding the legal rate, and shall be approved and signed by the Governor: *Provided, however*, That the State shall, through the funding board, have the right and privilege to redeem and pay off said note or notes at its pleasure before the maturity of same out of any funds in the treasury not otherwise appropriated.

SEC. 3. *Be it further enacted*, That section 223 of Milliken & Vertrees' Code, and all laws and parts of laws or parts of laws in conflict with the provisions of this act, be, and the

same are hereby, repealed, and this act take effect from and after its passage, the public welfare requiring it.

Passed June 9th, 1885.

EXHIBIT B.

Acts 1883, chapter 104, page 100.

SECTION 1. That after the chancery court at Nashville shall have divided the assets belonging to the Bank of Tennessee *pro rata* among the holders of the notes of the bank, who shall file their notes before distribution, taking from said note holders an amount of said bank notes equal to their *pro rata*, and the clerk and master shall have returned said notes so taken up into the treasury of the State to be cancelled, the Governor, treasurer, and comptroller be, and they are hereby, directed to prepare certificates of indebtedness to the amount in all of $1,000,000, and in denominations of $1, $5, and $20, as may be found most convenient for the purposes herein expressed. They shall be engraved and printed or lithographed on suitable paper, with appropriate device, be signed by the Governor, comptroller, and treasurer, and payable to the person to whom issued or bearer, and shall bear date the day of their issuance, and shall be payable one-fifth each year for a period of five years, and they shall show upon their face that they were issued under this act in substitution of the notes of the Bank of Tennessee and that they are receivable for taxes and other dues to the State, as by this act provided. They shall be numbered and shall not bear interest

SEC. 2. *Provided, however, always*, That fractional currency, notes of a less denomination than $5 and the $500 and $1,000 notes known as post notes, shall not be exchangeable under this act. They shall not be received, neither shall any certificates of indebtedness be issued therefor.

SEC. 3. That said certificates of indebtedness shall be receivable at any time, before or after due, in payment of all final judgments now outstanding and subsisting against defaulting or delinquent revenue collectors or their securities, and decrees in favor of the State and in payment of all back taxes which became payable before the year A. D. 1882, and also in payment of all the taxes and all other dues to the State from any tax-payer when such warrants or certificates may be due.

Office Supreme Court U. S.
FILED
JAN 13 1886
JAMES H. McKENNEY,
CLERK.

117-129 & 139

SUPREME COURT OF UNITED STATES.

NO. 935.

THE STATE OF TENNESSEE, *Plaintiff in Error,*

vs.

GEO. K. WHITWORTH, *Trustee of Davidson County.*

TAXABILITY OF THE SHARES OF STOCK IN THE NASHVILLE, CHATTANOOGA & ST. LOUIS R'Y.

Brief and Argument for the State of Tennessee.

S. WATSON, *of Counsel.*

Hamlock & Ambrose, Printers, Nashville.

THE STATE OF TENNESSEE, PLAINTIFF IN ERROR,

VERSUS

GEO. K. WHITWORTH, TRUSTEE OF DAVIDSON COUNTY.

STATEMENT OF FACTS.

This suit was commenced in the Circuit Court of Davidson county, Tennessee, and was removed, upon defendant's petition, to the Circuit Court of the United States for the Middle District of Tennessee.

It is an application for a writ of *mandamus* to compel the defendant to assess for taxation the individual shares of stock in the Nashville, Chattanooga and St. Louis Railway. This Company is a Tennessee corporation, having its principal office in Nashville.

The defendant is a tax collector, and, as such, it is his duty to assess for taxation all property which, by mistake of law or fact, has been omitted from the assessment roll. This duty is imposed upon him by the Act of March 7, 1879, which provides:

"That all collectors of taxes are hereby made assessors, to assess all property which, by mistake of law or facts, has not been assessed, and it is hereby made the duty of such collectors, in all cases whereby property has not been assessed, but on which taxes ought to be paid by law, to immediately assess the same, and to proceed to collect the taxes," etc.

This Act was amended by an Act passed March 28, 1883, ch. 181, which provides as follows:

"That section 1 of an Act passed March 7, 1879, entitled, An Act for the more rigid collection of the revenue, be so amended as to read as follows: That all collectors of taxes are hereby made assessors to assess all property which, by mistake of law or fact, has not been assessed, whether the omission be for the particular year or years; and it is hereby made the duty of such collectors, in all cases where property has not been assessed, but on which taxes ought to be paid by law, to immediately assess the same, and to proceed to collect the taxes."

Again, on the 9th day of March, 1885, another amendatory act was passed, as follows:

"Sec. 1. That the Act of the General Assembly, being chapter 181 of the Acts of 1883 (Milliken & Vertrees' Code, section 663, *et seq.*), be so amended as to add after the words 'previous year or,' and before the word 'year,' in section 663, the word 'three.'

"Sec. 2. That section 664 be so amended as to add thereto the words, 'provided that no taxes on property for more than three years back shall be assessed and collected where they have not been assessed and not paid in consequence of the errors or omissions of former collectors or assessors.'"

So that under the statutes of Tennessee, as they now stand, property cannot be assessed back for a longer period than three years.

The State claims the right to have the shares of stock in this Company assessed for three years back from the date of the assessment.

The statute which directs the assessment of this species of property for taxation was passed on March 1, 1869, and provides as follows:

"No tax shall hereafter be assessed upon the capital of any bank or banking association, or other joint stock company organized under the authority of this State or of the United States; but the stockholders in such banks and banking associations, or other corporations, shall be assessed and taxed upon the value of their shares of stock therein; said shares shall be included in the valuation of the personal property of such stockholders in the assessment of State, county, or municipal taxes at the place, town, or ward, or district where such bank or banking association or other corporation is located, and not elsewhere, whether the said stockholder reside in said place, town, ward or district or not, but not at a greater rate than is assessed upon other moneyed capital in the hands of individuals in the State; *and provided, further*, that nothing herein contained shall be held or construed to exempt from taxation the real estate held or owned by any such bank or banking association, or other corporation; but the same shall be subject to State, county, municipal, and other taxation, and in the same manner as other real estate is taxed."

The provisions of this act have been repeated in all the assessment statutes since that date with the following addition, enacted in 1873, and continued in all the subsequent acts:

"That this Act shall not be so construed and shall not so operate as to exonerate or release from taxation any company or corporation whose charter exempts stock and shares thereof from taxation, but it is hereby enacted that in all cases where such stock is exempted,

such company or corporation shall be assessed in such way as may be lawful."

The defendant entered a motion to dismiss the petition, but, without any action having been taken thereon, filed an answer, in which he states that the Nashville and Chattanooga Railroad Company was chartered on the 11th day of December, 1845, by the Legislature of Tennessee, and built and now operates a railroad from Nashville, Tenn., to Chattanooga, Tenn., passing through the States of Georgia and Alabama.

That the Nashville and North-western Railroad Company was chartered on January 22, 1852, and built a road from Nashville to Hickman, Kentucky.

Said last-named road was sold under decree of the Chancery Court at Nashville and purchased by the Nashville and Chattanooga Railroad Company. The decree was made to enforce the State's lien on said road.

After the said purchase the two roads were consolidated and made into one system, with the same officers and Board of Directors, and the name was changed to that of the Nashville, Chattanooga and St. Louis Railway.

The capital of said Company is $6,670,331. The original stock in the Nashville and North-western Railroad Company, by the sale, was destroyed. That a large amount of the shares of stock in said Company is held by non-residents of the State of Tennessee. That each and all the acts directing assessments to be made, and fixing the rates of taxation for each year have been repealed and are not now in existence. That the charters of the Nashville and Chattanooga and of the Nashville and North-western Railroad Companies contain the following provision:

"The capital stock of said Company shall be forever exempt from taxation, and the road, with all its fixtures and appurtenances, including the work-shops, ware-houses, and vehicles of transportation, shall be exempt from taxation for the period of twenty years from the completion of the road, and no longer." (Sec. 38, N. & C. charter.)

It was stipulated between counsel that the Nashville and Chattanooga Railroad Company was not fully organized until 1848. On April 11, 1848, the city of Charleston and the Georgia Railroad and Banking Company subscribed, the one $500,000, the other $250,000 of the capital stock of the Nashville and Chattanooga Railroad Com-

pany; and on April 25, 1848, these subscriptions were accepted by the Company. These were the first subscriptions of stock made by non-residents.

That the stock of the Company has never been assessed for taxation.

That defendant is Tax Collector of Davidson county, and that there have been at all times assessors. And also the following stipulation:

It is stipulated in addition to the stipulations made at the hearing that the Revenue Act of the State of Tennessee, of 1873, and all subsequent revenue acts, contain the following sections, among others, "that the basis of all assessments shall be as follows: . . . 4th. To assess the property in the district or ward in which it lies or is known to be at the time of the assessment, but all stock in banks, banking associations, or other corporations or joint stock companies, shall be assessed in the place, town, ward, or district in which such banks, banking associations or other corporations are located.

"Sec. 7. But personal property shall be assessed under the following heads: 1. The actual stock in such bank or banking, insurance, or other stock company or corporation, invested in business. . . . 5. All bonds, stock, and other like securities other than such as are exempt from taxation by the laws of the United States or of this State."

Then follow the provisions of the Act of March 1, 1869, relative to the taxation of the shares of stock "in any bank or banking association, or other joint stock company or corporation," and which has been carried forward in every revenue act adopted since its passage.

It is further stipulated that the following have been the rates of taxation for State purposes: for 1869, sixty cents per $100; for 1870, twenty cents; 1871, sixty cents.

It is further stipulated that the first section of the Act of December 12, 1871, fixed the rate of taxation for State purposes at forty cents per $100 for the year 1872 and all subsequent years, and this section was specifically repealed by the Act of March 21, 1877.

The Act of March 22, 1877, fixed the rate of taxation for State purposes at ten cents per $100 for 1877 and 1878, and this rate was continued by subsequent Legislatures until April 7, 1881, at which time the Legislature fixed the rate at forty cents per $100.

By an Act passed May 20, 1882, the Act of April 7, 1881, was amended by making the rate thirty cents per $100 for 1882. And this continued until the Act of March 30, 1883, which fixed the rate at forty cents per $100 for 1883 and all subsequent years, which Act is now in force.

The cause was heard upon the petition, answer and stipulations of counsel, and the Circuit Court dismissed the petition and denied a peremptory writ of mandamus on the ground that the shares of stock were exempt from taxation under the charter. The plaintiff brought the cause to this court by writ of error.

The questions presented to the court are:

1. Are the shares of stock of the individual stockholders exempt from taxation under the charter of the Nashville and Chattanooga Railroad Company?

2. If they are not exempt, can the shares held by non-residents of the State be assessed for taxation in the State.

ASSIGNMENT OF ERRORS.

I. The Circuit Court erred in dismissing plaintiff's petition.

II. The Circuit Court erred in holding that the shares of stock held by individual stockholders in the Nashville, Chattanooga and St. Louis Railway were not subject to taxation under the laws of Tennessee.

III. The Circuit Court erred in holding that the shares of stock held by individual stockholders in the Nashville, Chattanooga and St. Louis Railway were exempt from taxation under the charter of the Nashville and Chattanooga Railroad Company.

IV. The Circuit Court should have held that the shares of stock held by resident and non-resident stockholders were subject to assessment and taxation, and have compelled defendant by a peremptory writ of mandamus to assess all such shares for taxation, including those specifically mentioned in the petition.

BRIEF.

The shares of stock in the Nashville, Chattanooga and St. Louis Railway are not exempt from taxation under the 38th section of the charter of Nashville and Chattanooga Railroad Company.

FIRST.

The capital stock of a corporation is a distinct thing from the

shares of stock, and owned by different persons. The exemption of one does not necessarily exempt the other from taxation.

Farrington v. *Tennessee*, 95 U. S., 679.

Burroughs on Taxation, p. 164, sec. 83.

City of Memphis v. *Ensley*, 6 Baxter, 553.

Nashville Gaslight Co. v. *Nashville*, 8 Lea, 406.

Van Allen v. *Assessors*, 3 Wall., 573.

People v. *Commissioners*, 4 Wall., 458.

Memphis v. *Farrington*, 8 Baxter, 539.

1 *Desty on Taxation*, 353.

SECOND.

It was not the intention of the Legislature, in granting this charter, that the exemption of the capital stock should embrace the shares of stock.

1. Circumstances surrounding the Legislature, at the time the charter was granted, show that it had a clear appreciation of the distinction between capital stock and shares of stock.

a. Act of 1836 taxing stocks—passed nine years before the act incorporating the Nashville & Chattanooga Railroad Company.

b. Union Bank v. *The State*, 9 Yerg. (Tenn.) 490, decided in 1836, declaring distinction between capital stock and shares of stock for taxation purposes.

c. Act of 1844 taxing all stock of individual resident stockholders in all the incorporated companies in the State.

2. The contract of exemption was made with the Railroad Company, and not with the stockholders.

a. Use of the word "company" in the charter.

3. The words "capital stock" are not used in the charter as synonomous with "shares" of stock.

Morawetz on Corporations, section 18.

Nationol Banking Act.

Charter of Union Bank.

4. Nor is there any substantial distinction between "capital stock" and "capital" as used in the charter.

Burroughs on Taxation, section 83.

Railroad Companies v. *Gaines*, 97 U. S., 697.

1 Desty on Taxation, 353.

Memphis & Charleston R. R. Co. v. *Gaines*, 3 Tenn. Ch., 611.

Chattanooga v. *Railroad Co.*, 7 Lea 561.

5. Although the shares of stock and the property of the Company be taxed, it yet has a valuable privilege left in the exemption of the capital stock.

a. The capital stock is an important element in ascertaining the value of railroad property.

1 Desty on Taxation, 348.

Louisville & Nashville R. R. Co. v. *State*, 8 Heisk, 795.

State Railroad Tax Cases, 92 U. S., 603.

Farrington v. *Tennessee*, 95 U. S., 679.

Act of Tennessee Legislature of 1875 for assessing railroad property.

b. The Legislature may tax capital stock, as such, separately. Such a tax would be, not a property tax, but in the nature of a privilege tax.

Code of Tennessee, section 553.

Delaware Railroad Tax Cases, 18 Wall., 206.

Bank of Commerce v. *New York City*, 2 Black, 628.

People v. *Home Insurance Co.*, 92 N. Y., 328.

6. No reliance can be placed by defendant upon contemporaneous construction, because the stock has never been taxed.

a. Mere non-user of the taxing power by the State does not destroy the power or form any reason for not exercising it.

Chicago & R. R. Co. v. *Iowa*, 94 U. S., 155.

THIRD.

The State has the power to tax the stock of non-resident stockholders.

1. Act of February 4, 1848, taxing stock owned by non-resident stockholders. Passed before any subscriptions had been made by non-residents.

a. Changed by implication. Code, section 541; sub-sections 7, 9, 10.

b. Changed back to taxation of stock of non-residents, Acts of March 7, 1869, March 25, 1873, and now the law of the State.

2. Legislature may fix the *situs* of personal property.

Story on Conflict of Laws, sections 379, 380, 385, 390, 393.

Green v. *Buskirk*, 5 Wall., 307, and 7 Wall., 139.

3. Whatever property the State can, through its courts, seize and validly deprive the owner of his title thereto, such property it can subject to taxation.

Cooper v. *Reynolds*, 10 Wall., 308.
U. S. v. *Muller*, 11 Wall., 263.

4. Not only has the Legislature the power to change or destroy the legal fiction—that moveables follow the person—but for purposes of taxation this fiction does not exist.

Hoyt v. *Commissioners*, 23 N. Y.; 224.
People v. *Smith*, 88 N. Y., 576.
People v. *Gardner*, 51 Barb., 352.
Catlin v. *Hull*, 21 Vt., 152.
People v. *Home Insurance Co.*, 29 Cal., 533.
State v. *St. Louis County Court*, 47 Mo., 574.
Maltby v. *Reading R. R. Co.*, 52 Penn. St., 140.
State Tax on Foreign Held Bonds, 15 Wall., 300.
Railroad Co. v. *Jackson*, 7 Wall., 362.
Murray v. *Charleston*, 96 U. S., 432.
Railroad Co. v. *Collector*, 100 U. S., 327.
See opinion of Mr. Justice Bradley in Appendix, 703.

5. Stock in a corporation has an actual *situs*, the place where the corporation is located.

Ohio & Miss. R. R. Co. v. *Wheeler*, 1 Black, 286.
Muller v. *Dows*, 94 U. S., 444.
Wharton's Conflict of Laws, section 359.
Story's Conflict of Laws, section 383; n. 4, 6.
Mayor, etc., of Nashville v. *Thomas*, 5 Cold., 604.
Bedford v. *Mayor, etc., of Nashville*, 7 Heisk, 412.
National Bank v. *Commonwealth*, 9 Wall., 353.
Tappan v. *National Bank*, 19 Wall., 460.
First National Bank v. *Smith*, 45 Ill., 44.
Faxon v. *McCosh*, 12 Iowa, 527.

ARGUMENT.

The charter of the N. & C. R. R. Co. forever exempts the capital stock of the company from taxation. Does this perpetual exemption embrace the shares of stock owned by the individual stockholders? The exemption certainly does not in terms embrace the individual shares of stock, for no mention is made of the stockholders, nor any reference to their property. It is the capital stock of the company, that is, the corporation which is the owner of the capital stock. We have here an Act of the Legislature exempting

a particular species of property, namely, "*capital stock*," belonging to a particular person, namely, "the company." Can this exemption be made to apply to another species of property, namely, "shares of stock," belonging to another person, namely, the stockholder? It cannot, unless it can be shown that "capital stock" is identical with "shares of stock," and the company identical with the stockholder. Such an inquiry leads us to two general propositions, which may be thus stated:

First.—The *capital stock* of a corporation is a distinct thing from the *shares* of stock; and owned by different persons. The exemption of one does not necessarily exempt the other from taxation.

Second.—It was not the intention of the Legislature in granting this charter, that the exemption of the capital stock should embrace the shares of stock.

First.—The capital stock of a corporation is the fund paid in by the subscribers, which, after the organization, becomes the exclusive property of the corporation. A share of stock is the interest which the subscriber or stockholder has in the capital stock in proportion to the amount paid in by him. The share of stock belongs exclusively to the stockholder, and the corporation has no interest in, or control over it.

Capital stock, when first paid in, is tangible property, intended to be used and invested by the corporation in promotion of the objects of its creation. Shares of stock are simply choses in action representing certain interests in the property of the company and entitling the holder to a participation in the profits. After the investment of the money originally composing the capital stock, the corporation acquires a new species of property which may largely increase or diminish in value without affecting the amount of the capital stock; this remains, in legal contemplation, a fixed and invariable quantity.

Now, the capital stock and the shares of stock may practically exactly represent each other; for example, upon the organization of the corporation and before the capital stock has been invested in other property, the aggregate amount of all the shares will equal in value the fund paid in and constituting the capital stock. But this identity is simply one of pecuniary value, the ownership of each being entirely distinct. They represent each other only as the

property of one person represents that of another, in that both have the same value.

But taxation is concerned with the *person* who is to pay the tax, and looks to the *property* only as a measure of the amount to be paid. In Burroughs on Taxation, p. 4, section 7, it is said:

"The tax is a contribution required of its citizens by the State, and when it is measured, as to its amount, by the value or the productiveness of the property, it is still a tax on the person, and there is a personal liability on the person assessed with the tax The individual, and not his property, pays the tax—the property is resorted to for the purpose of ascertaining the amount of the tax with which the owner must be charged. The tax is imposed upon the owner on account of his ownership of the property."

The corporation, therefore, may be taxed in respect to its ownership of the capital stock, and the stockholder, in respect to his ownership of his shares of stock, and this is in no sense double taxation.

In *Farrington vs. Tennessee*, 95, U. S., 679 Mr., Justice Swayne says:

"The capital stock and the shares of stock are distinct things. The capital stock is the money paid, or authorized, or required to be paid in as the basis of the business of the bank, and the means of conducting its operations. It represents whatever it may be invested in. If a large surplus be accumulated and laid by, that does not become a part of it. The amount authorized cannot be increased without proper legal authority. If there be losses which impair it, there can be no formal reduction without the like sanction. No power to increase or diminish it, belongs inherently to the corporation. It is a trust fund, held by the corporation as a trustee. It is subject to taxation like other property." And again, "The shares of the capital stock are usually represented by certificates. Every holder is a *cestui que trust* to the extent of his ownership. The shares are held, and may be bought and sold and taxed like other property. Each share represents an aliquot part of the capital stock. But the holder cannot touch a dollar of the principal. He is entitled only to share in the dividends and profits. Upon the dissolution of the institution, each shareholder is entitled to a proportionate share of the residuum after satisfying all liabilities. The liens of all creditors are prior to his. The corporation, though holding and owning the capital stock, cannot vote upon it. It is the right and duty of the shareholders to vote. They in this way give continuity to the life of the corporation, and may thus control and direct its management and operations. The capital stock and the shares may both be taxed, and it is not double taxation."

In Burroughs on Taxation, it is said, page 164, section 83:

"In considering the subject of taxation of corporations, it is necessary to keep distinctly before the mind the distinctions between the franchises of the corporation, and the capital, or capital stock of a corporation, the property in which this capital is invested, such as lands, buildings, machinery, and other property suitable to the purposes of the corporation; the shares of the stockholders and the dividends or profits accruing from the management of the property of the corporation. These artificial persons may be made to contribute to the support of the government under which they exist, and a tax may be imposed upon the franchises or the property of the corporation, or both. When imposed upon its franchises, the amount of the tax may be measured by its capital stock, either at par, or at its nominal value, or by its dividends, or it may be a specific amount. It may also be taxed on its property into which it has been invested, and the stockholders may in addition, be taxed on the value of their shares, and also on the profits, or dividends, as income."

In the case of the City of Memphis *vs.* Ensley, 6 Baxter, 553, the Supreme Court of Tennessee decided, that both the capital stock and the shares of stock were subject to taxation. The head note is thus:

"Capital stock is the whole individual fund paid in by the stockholders, the legal right to which is vested in the corporation, to be used and managed in trust for benefit of members. Shares of stockholders are the individual interests of the party in dividends, as they are declared, and the remote right to a *pro rata* distribution of the effects of the corporation on hand at the expiration of the charter.

"Shareholders in a moneyed corporation are liable to be taxed on the market value of their stock, regardless of the fact that the capital stock invested in the property of the corporation has also been taxed and the same has been paid."

The question in this case arose in regard to the taxation of shares of stock in the Memphis Gaslight Company, and again in the case of the Nashville Gaslight Company *vs.* the Mayor and City Council of Nashville, 8 Lea, 406, the same doctrine was laid down by the Supreme Court of Tennessee.

An exemption of capital stock of a corporation does not embrace the shares held by individual shareholders.

"The capital and the shares of stock of a corporation are separate properties—the capital being the property of the corporation and taxable to it as such, and the shares of stock being the property

of the shareholders and taxable to them. The exemption of one of such properties from taxation will not necessarily exempt the other; so the taxation of one is not an imposition of a tax on the other."—1 Desty on Taxation, 353.

In Van Allen *vs.* the Assessors, 3 Wallace, 573, the Court says:

"But, in addition to this view, the tax on the shares is not a tax on the capital of the bank. The corporation is the legal owner of all the property of the bank, real and personal; and within the powers conferred upon it by the charter, and for the purpose for which it was created, can deal with the corporate property as absolutely as a private individual can deal with his own. This is familiar law, and will be found in every work that may be opened on the subject of corporations. * * * *

"The interest of the shareholder entitles him to participate in the net profits earned by the bank in the employment of its capital, during the existence of its charter, in proportion to the number of its shares; and upon its dissolution or termination, to his proportion of the property that may remain of the corporation after the payment of its debts. This is a distinct, independent interest or property, held by the shareholder, like any other property that may belong to him."

This was said in regard to a national bank, whose shares of stock were taxable under the Act of Congress. But the same doctrine was laid down in the same words, in regard to a State bank, in the case of the People *vs.* the Commissioners, 4 Wallace, 458.

In Memphis *vs.* Farrington, 8 Baxter, 539, the same question arose in regard to the charters of certain banks and insurance companies. The cases were twice argued before the Supreme Court of Tennessee, and an elaborate opinion delivered by Judge Freeman, in which the authorities were examined thoroughly, and the conclusion reached, that an exemption of the capital stock did not embrace shares of stock. The head note is thus:

"The capital stock in a corporation, and the shares thereof owned by the stockholders, are two distinct properties, and an exemption of the one does not thereby necessarily exempt the other, nor the taxation of the latter operate as a tax on the former, so as to interfere with the exemptions from such burdens."

This case was reversed by this Court in Farrington *vs.* Tennessee, 95, U. S., 679, cited above, upon the ground that, upon a proper construction of the charters of the companies, it was the legislative intent to exempt the shares of stock; but the principle laid down by the State Court, as stated above in the head note quoted, was recognized as correct.

SECOND.

It was not the intention of the Legislature in granting this charter, that the exemption of the capital stock, should embrace the shares of stock.

We have shown that there is a clear distinction between *capital* stock and *shares* of stock; that both may be taxed, and it is not double taxation, and that an exemption from taxation of one does not embrace the exemption of the other.

The question here is not whether the Legislature intended to *create* a distinction between capital stock and shares of stock, so as to exclude the latter from the benefits of the exemption; but whether the Legislature intended to *destroy* the well-recognized distinction between the two so as to extend the benefit of the exemption to the shares of stock.

In other words, the presumption at the outset is that the Legislature intended to recognize and act upon the legal principle of a distinction between these two species of property, unless it is clearly shown to the contrary.

Before proceeding to an examination of the language of the charter, it will not be inappropriate to state the condition of things preceding the time when this charter was granted, in order to show that the Legislature acted with full knowledge of the distinction between capital stock and shares of stock as subjects of taxation.

The charter of the Nashville & Chattanooga Railroad Company was granted in 1845. The first revenue law passed after the adoption of the Constitution of 1834 was enacted in February, 1836. The first section is as follows:

"That all lands of this State held by deed, grant, entry or dower, and town lots other than such as are exempted from taxation as hereinafter provided, all slaves between the ages of twelve and fifty years, all pleasure carriages and bank stock other than such as may be exempted from taxation as hereinafter provided, shall be subject to the payment of an annual tax of five cents on every hundred dollars of the value thereof as hereinafter ascertained; and in ascertaining the value of said lands and town lots, all improvements thereon, which are attached to, and constitute a part of the freehold, shall be included."

In the second section, among other things enumerated as exempt from taxation, are:

"All stocks owned by the State, or by literary, religious, and

charitable institutions; all capital stock or property of such incorporated companies as have heretofore been, or may hereafter be, exempted from taxation in their respective charters of incorporation," etc.

This Act shows that the Legislature had a clear idea of the distinction between capital stock and shares of stock as subjects of taxation. The State was, at that time, the owner of stock in certain banks, and her stock, *i. e.*, *shares* of stock, were to be exempt from taxation. There were also certain of these banks, and perhaps other corporations, whose *capital stock* was exempt in their charters. This "capital stock" of such incorporated companies was, therefore, not to be assessed for taxation. Among the corporations which claimed charter exemptions from taxation was the Union Bank of Tennessee, created in 1832. The 11th section of its charter was as follows:

"That in consideration of the privileges granted by this charter, the bank agrees to pay the State annually one-half of one per cent. on the amount of the capital stock paid in by the stockholders other than the State."

In the case of the Union Bank v. The State, 9 Yerger, 490, the Supreme Court of Tennessee held that this 11th section of the charter created a contract exemption of the "capital stock" of the Union Bank, but that the "shares" of stock were subject to taxation, and that taxation of such shares was contemplated by the Act of 1836, quoted above. The Court say:

"But let us inquire, in the second place, whether it was the intention of the framers of the Constitution and the Legislature of 1836 to impose additional taxation on these corporate institutions which had been brought into existence, and which contracted to pay a consideration for the privileges which had been granted them. We are clearly of opinion that they did not. The twenty eighth section of the second article of the Constitution, which is the one under consideration, in enumerating the different kinds of property which shall be made liable to taxation, mentions bank stock, but not the capital stock of the bank. It can scarcely be necessary to say that by bank stock is meant individual interest in the dividends as they are declared, and a right to *pro rata* distribution of the effects of the bank on hand at the expiration of the charter, and that the capital stock of the bank is the whole undivided fund paid in by the stockholders, the legal right to which is vested in the corporation, to be used and managed in trust for the benefit of the members. This clause of our Constitution does not direct that the capital stock of any corporation shall be taxed, but has left it to the discretion of the Legislature. This brings us to an examination of

the Act of 1836, ch. 13, 14, which it has been contended does tax the capital stock of the Union Bank of Tennessee. The first section of chapter 13, in enumerating the different kinds of property which shall be liable to taxation, mentions bank stock other than such as may be exempted from taxation as thereinafter provided for, and subjects it, in common with every other description of property, to an assessment of five cents on every one hundred dollars. The capital stock of a bank is not here enumerated, and the second section of the same statute shows conclusively that the Legislature had a very distinct conception of the difference between bank stock and the capital stock of the bank, for it provides, among other things, 'that all stocks owned by the State, or by literary, religious, or charitable institutions, and all capital stock of all such incorporated companies as had heretofore been or might thereafter be exempted from taxation in their respective charters of incorporation, shall be exempted from the payment of every State, county, or other tax."

The court further held that the shares of stock could not be taxed under the acts then in force for the reason that these acts provided for an assessment of said stock at its par value, whereas the Constitution required that all property should be taxed at its actual value.

On the 19th day of January, 1844, an Act was passed providing that—

"Money or capital loaned or deposited at interest, or used in shaving notes or other evidence of debt, and all stock of individual resident stockholders in all the incorporated companies, be added to the list of property enumerated in the Revenue Act of 1835–6, Acts of 1843, chapter cxv., section 1."

In the following year the charter of the Nashville and Chattanooga Railroad Company was granted. Thus it will be seen that at the time this charter was granted the Legislature had, in the Act of February 5, 1836, shown its clear appreciation of the distinction between *capital stock* and *shares* of stock as subjects of taxation, the Supreme Court of the State had recognized this distinction as a principle of law, and the Legislature had, by the Act of January 19, 1844, declared that the *shares* of stock in *all* incorporated companies should be assessed for taxation.

Let us now examine the charter granted by the Legislature to the Nashville and Chattanooga Railroad Company.

The 38th section of the charter is as follows:

"The capital stock of said company shall be forever exempt from taxation, and the road, with all its fixtures and appurtenances, in-

cluding work-shops, warehouses, and vehicles of transportation, shall be exempt from taxation for the period of twenty years from the completion of the road, and no longer."

Now, it is certain that this section of the charter constitutes a contract between the State of Tennessee and some person to exempt from taxation some sort of property.

It is equally clear that the property thus exempted must belong to the person in whose favor the contract of exemption is made.

The question then is, with whom did the State make the contract, the railroad company or the stockholders in said company?

It is entirely aside from the discussion to say that the intention was to benefit the stockholders by exempting the capital stock. This is freely admitted; it was the intention to benefit the stockholders, and they certainly derive an important advantage from the exemption of the capital stock, as they did from the exemption of the other property of the company.

But the question is not as to beneficial results, but as to what particular person is a party with the State to the contract.

The learned Justice who decided the case at the circuit says, in his opinion, "here the exemption is not of a person, but of a thing; it is not that no tax shall be required of the corporation in respect to its capital stock, but that the capital stock itself shall be forever exempt from taxation—that is, shall not be regarded as a lawful basis or subject of taxation—thus removing the thing itself from the list of taxables under any authority deriving its powers from the State."

Now, it is perfectly competent for the Legislature to exempt particular property without regard to its ownership, and continue the exemption into the hands of whomsoever it may come. But there is no contract element about such an exemption, and it can be destroyed at the will of the Legislature.

If then the charter "does not," in the language of the opinion, "refer to persons, but operates distinctly upon the very thing it describes," it constitutes no contract and is subject to be changed at the will of the Legislature.

Now, if there is one principle of law thoroughly settled by the decisions of this Court, it is that an exemption from taxation is purely personal and does not attach to the thing exempted.

In *Morgan* v. *Louisiana*, 93 U. S., 217, the Court say: "They

(franchises of a company) are positive rights or privileges, without the possession of which the road of the Company could not be successfully worked. Immunity from taxation is not one of them. The former may be conveyed to a purchaser of the road as part of the property of the Company; *the latter is personal*, and incapable of transfer without express statutory direction. See also *Railroad Co.* v. *County of Hamblen*, 102 U. S., 273 *Wilson* v. *Gaines*, 103 U. S., 417.

If then, the charter exemption is a contract, the exemption inheres in some particular person, who holds it as a purely personal privilege or immunity.

Is that person the Railroad Company or the stockholder? The learned Justice in his opinion says:

"Nor can the exemption be limited by the idea that the clause is a contract between the State and the corporation as such, and not with the natural persons composing it as stockholders. That supposition, in the first place, is not accurate. The contract of the charter is with all who become parties to it by accepting its proposals, as all do who subscribe to the capital stock it authorizes upon the terms and conditions expressed and implied."

The 38th section of the charter says:

"The capital stock of *said Company* shall be forever exempt from taxation."

What company? Why, the Nashville & Chattanooga Railroad Company; the *Company* mentioned in the first section of the charter, which says:

"The formation of a *Company* is hereby authorized, which, when formed, shall be a body corporate, by the name and style of the Nashville & Chattanooga Railroad Company, and by said corporate name shall be capable in law," etc.

The *Company* mentioned all through the charter as the recipient of important privileges, such as are peculiar to corporate bodies. In sections 2, 3, 4, 5, 6, 7, the Company is mentioned in connection with the subscriptions of stock and the organization of the corporate body. In section 5 it is said: "And whenever that number of shares shall be subscribed, the *Company* shall be considered as formed, as having a *corporate* existence as aforesaid, etc." In section 8 the mode of managing the affairs of said *Company* is prescribed; in section 9 it is said, "At which time and place the said stockholders, in person or by proxy, shall proceed to elect the

Directors of the *Company*, and to enact all such regulations, rules, and by-laws as may be necessary for the government of the *corporation*, etc.;" section 11 speaks of what contracts shall be binding on the *Company*, and section 12 prescribes the liability of the Directors for exceeding in their contracts "the amount of the capital of the *corporation*," which liability shall inure to the benefit of the contractors and the *corporation*; section 14 gives said *Company* the exclusive right of transportation, etc.; section 15 authorizes the Directors to call for payments on the shares of stocks, and upon the stockholder's failure to pay the installments, his stock shall be forfeited, "and the same shall vest in and belong to the *Company*, etc.;" section 16 provides for the transfer of the stock of said *Company*, and section 17 prescribes the mode of increasing its capital; section 21 gives the said *Company* the right to purchase and hold lands, etc., and section 22 gives the right to construct the road across and along any public road, etc.; sections 24 and 25 prescribe the mode of taking lands for the use of the *Company;* section 34 declares that the charter may be amended upon the petition of the President and Board of Directors, "and when such amendments shall be adopted by the Legislature and submitted to the Directory, and be accepted and adopted unanimously by the President and Directors, *they shall be obligatory on the stockholders and not otherwise;*" the meaning and object of this last clause clearly are that, since the stockholders have no voice in the proposal and acceptance of amendments to the charter, they should not be bound by any action of the Directors, unless such action is the result of the unanimous will of the Directors; otherwise, the stockholders by their inherent power as such may reject the amendment.

Section 37 is as follows:

"If by decree or otherwise the said *corporation* shall be dissolved, the President and Directors of said *Company* are created trustees with such powers only as may be necessary to collect the debts due the *Company*, preserve the property, pay the debts, and distribute the property and effects of the *Company* to those who may be entitled thereto under the charter."

Now, it will be seen that, from the first section providing for the creation of a company as a body corporate by the name and style of the Nashville & Chattanooga Railroad Company, through the whole charter and down to the last quoted section providing for its dissolution, the word *company* is in every instance used strictly and

accurately for the corporate body; and nowhere is there the slightest intimation that *company* is intended to stand for the aggregate body of stockholders.

When, therefore, the Legislature, in the 38th section, use the words—"the capital stock of said Company," they mean exactly what they have said and meant throughout the entire charter, that is, the Nashville & Chattanooga Railroad *Company*, the body corporate created by that name.

Now, it will be observed that immediately after the words "the capital stock of said Company shall be forever exempt from taxation," follow the words "and the road with all its fixtures and appurtenances . . . shall be exempt from taxation, etc." Certainly, the road and other things mentioned in the latter clause are the property of the body corporate, the Nashville & Chattanooga Railroad Company. And yet the section only mentions one person as the owner of anything, that is, *said Company*.

Is it possible that the Legislature, in using the words "capital stock of said Company," in the first clause of the section, meant to exempt the property of the stockholders, and then, without the slightest change of phraseology to indicate such a purpose, intended to exempt in the second clause the property of the body corporate? Surely, such an interpretation of legislative intent would be arbitrary and unjust, and especially so when made use of to secure a perpetual exemption from taxation, as claimed in this case.

The conclusion is irresistible that the contract for exemption contained in the 38th section is a contract between the State and the body corporate, created by the name and style of the Nashville & Chattanooga Railroad Company, and not a contract with the stockholders of said Company.

But the State has no contention here with the Railroad Company; she is not seeking to tax any of its property or to interfere in any way with its rights under the charter.

It is insisted for the defendant that the words "capital stock" in the 38th section are used as synonomous with shares of stock, and therefore that the latter are within the exemption. But if this were so, it can avail him nothing, for the stockholders, the owners of the property, are not parties to the contract of exemption; and the exemption conferred upon the Railroad Company cannot apply

to the shares of stock, for the Company is not the owner of the property.

But let us examine this position and look to some of the sections of the charter relied upon as supporting defendant's contention.

The fourth section declares that "if the number of four thousand shares shall have been subscribed, on each of which there shall have been paid the sum of fifty cents, the Nashville & Chattanooga Railroad Company shall be regarded as formed, and thenceforth, and from the day of the closing of the books of subscription, as aforesaid, the said subscribers to the stock shall form a body politic and corporate in deed and in law, by the name and for the purpose aforesaid, and in all things to be represented by the board of commissioners aforesaid, until the election of a board of directors, as hereinafter prescribed."

This language does not change the nature of the corporation or give the shareholders any greater or less interest in the capital stock of the Company. It is the ordinary language used in thousands of charters, and is adopted for the purpose of preventing an actual formation of the corporation before the requisite amount of stock shall have been subscribed. It is merely a condition precedent to the exercise of corporate powers. Thus, it is said in Morawetz on Corporations, section 18:

"Whether the grantees of a charter shall be entitled to form a corporation and exercise corporate powers, after a simple acceptance of their charter, or only after the performance of certain conditions precedent, must necessarily depend upon the terms of the grant. If not provided to the contrary, the incorporation will take effect as soon as the charter has been accepted. And even though a particular mode of acceptance be directed, as by filing a certificate, a failure to comply is not decisive. It is the fact of acceptance that binds the company, and the certificate is merely evidence of the fact.

"Accordingly, it has been held that, under a charter providing that the grantees and such other persons as may be associated with them, shall be, and they are hereby incorporated, the grantees are authorized to form a corporation and exercise corporate powers, without having taken associates or appointed officers. So, a grant of a charter to one, with a liberty to take associates, will invest the sole grantee with all the corporate franchises, if this appear to be the intention of the Legislature and even if it were the duty of the grantee to take associates, this would be a condition subsequent only."

"However, where the charter declared that the grantees, and such other persons as should afterwards become stockholders, 'are hereby constituted a body politic,' and by another provision of the Act a discretion was vested in certain commissioners to distribute the whole number of shares into which the Company's capital was divided among the subscribers, in case the amount limited had been applied for, the distribution of shares was a condition precedent to the formation of a corporation. For, in this case, the grantees of the franchises and the members of the Company could not be ascertained until after the shares had been apportioned."

Moreover, the charter of the Union Bank contains a provision similar to the above quoted language. Section 2 of that charter says:

"That the subscribers to said bank, their successors and assigns, shall be, and they are hereby created a body corporate and politic in law and in fact, by the name and style of the President, Directors and Company of the Union Bank of the State of Tennessee," etc.

And in the case of this charter the distinction between *capital* stock and shares of stock has been explicitly affirmed by the Supreme Court of Tennessee in the case of the Union Bank *v.* the State, above referred to.

Also, in the National Banking Act a like phraseology is used in regard to the creation of the corporation, or "association," as it is there called. And in regard to those institutions the same distinction between capital stock and shares of stock has been recognized by the Supreme Court, as shown above.

Section 2 of the charter of the Nashville & Chattanooga Railroad Company provides that—

"Books of subscription of sixty thousand shares of the capital stock of said Company, of twenty five dollars each, shall be opened on the first Monday in January, 1846, and shall be kept open for six days, between the hours of 10 o'clock in the morning and 4 o'clock in the evening of each of those days," etc.

This language is absolutely too clear for misconstruction. Here the two things, capital stock of said Company and the shares of the subscribers are sharply distinguished. The aggregate amount paid in by the subscribers becomes the capital stock of the company; each subscriber upon the payment of his subscription, obtains a *share* of that *capital* stock—his exclusive property. After the money has been paid in, neither any one subscriber, nor all of them together, can touch a dollar of it, or exercise any ownership over the fund, nor any control over it, except indirectly in their corporate capacity

as stockholders, and in the manner pointed out in the charter. The language of this section makes each subscriber simply a stockholder, and his interest simply entitles him, in the language of the Court in *Van Allen* v. *the Assessors*, "to participate in any profits earned by the corporation in the employment of its capital during the existence of its charter in proportion to the number of its shares."

It will be observed that the words "shares of the capital stock" are the very words used by Mr. Justice Swayne in the case of *Farrington* v. *Tennessee*, where he explicitly states the distinction between the capital stock and shares of stock.

Moreover, we find similar language in the charter of the Union Bank, sections 1, 6, 8.

Section 1 of that charter says:

"That there shall be established a bank at Nashville, the capital stock of which shall not exceed three millions of dollars, and shall be divided into shares of one hundred dollars each."

Section 6 says:

"That whenever there shall have been five thousand shares of the capital stock of said bank subscribed, and the commissioners appointed in Nashville shall certify that fact in writing to the Governor of the State for the time being, he is thereupon authorized and required to subscribe on behalf of the State for five thousand shares of the capital stock of said bank."

And section 8:

"That so soon as five thousand shares of the capital stock of said bank shall have been subscribed, exclusive of the amount taken by the State, an election shall be held for Directors," etc.

An attempt is made by our opponents to draw a distinction between the words "capital" and "capital stock," as used in the charter.

Now, these words, ordinarily, have exactly the same meaning, and are used one for the other, as suits the convenience of the Court or text writer.

In Burroughs on Taxation it is said (see section 83):

"A corporation is an artificial person created by law; its rights and privileges are measured by its charter, which gives it birth. It is authorized to raise a specified amount of capital by subscription of its members. The amount subscribed is called its *Capital*, sometimes its *capital stock*. This capital stock is divided into shares, each representing an integral part of the capital, and is owned by the members in proportion to the respective amounts subscribed.

The certificate issued by the proper officers of the corporation, is the evidence of the number of shares held by each member, and is called his stock."

"Capital and capital stock are in legal intendment synonomous, and are used in legislative acts as equivalent terms, though not of the same meaning." 1 Desty on Taxation, 353.

In the charter of the Nashville & Chattanooga Railroad Company "capital" and "capital stock" are used in section 12 as identically the same thing:

"The Board of Directors shall not exceed in their contracts the amount of the capital of the corporation, and of the funds which the Company may have borrowed and placed at the disposal of the board."

In section 17 "capital" includes "capital stock" and something more, thus:

"The said Company may at any time increase its capital to a sum sufficient to complete the said road and stock it with everything necessary to give it full operation and effect, either by opening books for new stock, or by selling such new stock, or by borrowing money on the credit of the Company, and on the mortgage of its charter and works."

The capital here is the capital stock plus the money borrowed on credit, etc.

They are not, in this section, regarded as two separate and distinct things, except so far as the "capital" may exceed the "capital stock" by the amounts borrowed. But how does this help our opponents' case? Suppose the "capital" is the "capital stock" plus the money borrowed, does this convert capital stock into "shares of stock?" It is said that the capital is invested in the road and property of the company which is subject to taxation, and hence capital stock must mean shares of stock. But if the "capital" includes the "capital stock," is not the latter also invested in the road and property? That the "capital stock" is invested in the road and property can admit of no doubt; but whether this property was intended by the Legislature to *represent* the capital stock, is a far different question. And this was the exact question presented to the Court in *Railroad Company* v. *Gaines*, 97 U. S., 697.

The question in that case arose upon the construction of the charter of the Memphis & Charleston Railroad Company, which was granted at the same session of the Legislature at which the charter of the Nashville & Chattanooga Railroad Company was

granted, and which is an exact copy of the latter charter, with the exception of some unimportant matters of detail. It was contended by the Memphis & Charleston Railroad Company that its property, having been purchased with its capital stock *and* borrowed money, the exemption should apply to so much of said property as represented the capital stock, leaving subject to taxation that portion of the property purchased with the borrowed money. But the Court repudiated this distinction. Chief Justice Waite says:

"But in this case, while the capital stock is forever exempt, the road, with all its fixtures and appurtenances, including workshops, warehouses, and vehicles of transportation, is only exempt for twenty years from the completion of the road. Clearly under such circumstances it could not be understood that the enumerated property was to represent the capital for the purposes of taxation. Exemptions are never to be presumed, on the contrary, the presumptions are always against them. The exemption of the property for twenty years only is equivalent to an express power to tax after that time.

"It is said, however, that both provisions of the statute can stand—that which exempts the capital, and that which taxes the tangible property—if the part of the property which represents the capital is exempted, and that which represents the bonded debt is taxed; but we certainly have no clear manifestation of any such intention by the Legislature. It is as distinctly stated that the road and *all* its fixtures, etc., are to be taxed as that the capital is to be exempt. While the Company had power to borrow money on mortgage, it is very clear from the provisions of the charter it was expected the road might be completed with capital alone. Section 17, in which the power of mortgage is given, is as follows: 'The said Company may at any time increase the capital stock to a sum sufficient to complete the road and stock it with everything necessary to give full operation and effect, either by opening books for new stock, or by selling such new stock, or by borrowing money on the credit of the Company and on mortgage of its charter and works; and the manner in which the same shall be done, in either case, shall be prescribed by the stockholders in a general meeting.' . . . Under these circumstances it cannot for a moment be doubted that if the Legislature had supposed a different rule of taxation was to be applied if the road was built with borrowed money, from what should be if it was built from stock, some mention would have been made of it, and some means provided for determining what was exempt as representing stock, and what taxable as representing debt. Then again, suppose the debt paid off, either by the issue of new stock or the earnings of the road, would the

property then be exempt as capital, or taxable because originally built with borrowed money?"

It will be observed that throughout this opinion the Court use the words "capital" and "capital stock" as synonymous terms, having exactly the same meaning. Indeed, in quoting the seventeenth section of the charter, the Court use the word capital *stock*, whereas the word used in the charter is "capital," the same as in the seventeenth section of the charter of the Nashville and Chattanooga Railroad Company.

Moreover, the Court regard the significance of the seventeenth section to consist in the grant of power to mortgage the road, not as creating some refined distinction between "capital" and "capital stock."

Again, the Court say that the Legislature contemplated the construction of the road with capital alone, without recourse to the borrowing power; or, in other words, that the whole of the capital stock should be *invested* in the road, as was in fact done.

But the Legislature failed to declare in express terms that the property in which the capital stock was invested should, for the purposes of taxation, represent the capital stock. The Court, therefore, acting on the principle that the presumptions are against exemptions, declare the *whole* property subject to taxation, refusing to make any distinction between the property bought with capital stock and that bought with borrowed money. And yet in this case the property and the capital stock which created it were *practically* the same, and subject to the same ownership—that of the railroad company. And so in regard to the property and the borrowed money which created it, and yet the Court refused to declare, in the absence of express legislative direction, that *theoretically* and for the purpose of *taxation* these species of property mutually represented each other.

Now, in the case at bar, our opponents gravely ask the Court to declare that, for the purpose of maintaining a perpetual exemption from taxation, the capital stock of the Nashville and Chattanooga Railroad Company represents the shares of stock; and that, too, in view of the fact that, before the granting of that charter, the Supreme Court of Tennessee had decided, on a charter similar to that of the Nashville and Chattanooga Railroad Company, that there was a clear distinction between capital stock and shares of

stock, and the further fact that, hardly a year before this charter was granted, the Legislature had directed the taxation of the individual shares of stock in *all* incorporated companies, and, moreover, in the matter of a charter which, from the very first section to the last, fairly bristles with pointed suggestions of the distinction between capital stock and shares of stock.

Our opponents rely upon a *dictum* of Chancellor Cooper to the effect that the words "capital stock," as used in the charter, are intended to embrace the shares of stock. *Memphis and Charleston Railroad Company* v. *Gaines*, 3 Tenn., ch. 611.

In the case of *Chattanooga* v. *Railroad Company*, 7 Lea, 561, the Supreme Court of Tennessee were called upon to pass upon the validity of the Act of 1875 providing for the assessment of railroad property. That Act required the assessors to deduct from the ascertained value "the real cash value of the individual shares." The Court held the Act unconsitutional. They say:

"We decide nothing as to what may be the effect of exemption of capital stock in charters of various companies holding such exemptions, nor whether, under these exemptions, in connection with the language of such charters, they may or may not be construed to exempt the individual shares. That, and the like questions, are not before us."

The Supreme Court evidently considered this too grave a question upon which to hazard a *dictum* without having the matter directly before them.

But, it is argued, the whole property of the Company in which the capital stock has been invested is subject to taxation under the decision in *Railroad Company* v. *Gaines*, cited above; if, now, the shares of stock are also subject to taxation, there will be nothing left to which the exemption can apply; therefore the exemption clause is meaningless.

To this we reply that the exemption applies to the *capital stock* of the Company, which is an independent subject of taxation.

There are four elements of property in all corporations which may be taxed by the State: the capital stock, the corporate property, the franchise, and the shares of stock.

These may be all taxed at once and in such manner as the Legislature may direct.

In 1 Desty on Taxation, 348, it is said:

"A corporation is possessed of three kinds of property subject to

taxation: *First*, the capital stock; *second*, the corporate property; and, *third*, the franchise; and the shares may be assessed against their owners."

In *Louisville and Nashville Railroad Company* v. *The State*, 8 Heiskell, 795, the Court say:

"The four elements of property in all joint stock companies are the capital stock, the corporate property, the franchise of the corporation, and the individual stock of the shareholders."

In *State Railroad Tax Cases*, 92 U. S., 603, Mr. Justice Miller says:

"That the franchise, capital stock, business, and profits of all corporations are liable to taxation in the place where they do business, and by the State which creates them, admits of no dispute at this day."

In *Farrington* v. *Tennessee*, cited above, Mr. Justice Swayne, after stating that the capital stock and shares of stock may both be taxed, says:

"There are other objects in this connection liable to taxation. It may be well to advert to some of them.

1. The franchise to be a corporation and exercise its powers in the prosecution of its business.

2. Accumulated earnings.

3. Profits and dividends.

4. Real estate belonging to the corporation and necessary for its business.

5. Banks and bankers are taxed by the United States: 1. On their deposits. 2. On the capital employed in their business. 3. On their circulation. 4. On the notes of every person or State bank used and paid out for circulation. The States are permitted, in addition, to tax the shares of the national banks." (And yet the national banks, although subject to such searching taxation, seem to regard the exemption of their capital stock as a great benefit, as their vigorous contests in this court show.)

Now, the Legislature may assess and tax all these elements of corporate property separately, or it may combine them together and deduce from their values thus combined the aggregate value of the corporate property as a whole. The latter method is the one generally employed by the States now in assessing railroad property for taxation, and is the method adopted by the Legislature of Tennessee. The Act of March 20, 1875, is the statute by which railroad

property is assessed for taxation in this State. (The three first sections are given in the appendix.)

This Act sets out the four elements of property in railroad companies as the capital stock, the corporate property, the franchise, and the shares of stock.

Then in Sec. 3 it directs the assessors thus: "In making such valuation they shall have in view and look to the capital stock, the corporate property, the franchises of each company, as well as the gross receipts and the individual stock of each shareholder." But subsequently in the same section the assessors are directed to deduct from the aggregate value "the real cash value of the individual shares." This clause, as we have seen above, the State Supreme Court, in the case of *Chattanooga* v. *The Railroad Company*, has declared unconstitutional, not upon the ground that the shares are subject to taxation, but for the reason that under the State Constitution taxation must be equal and uniform, and hence in an assessment act the Legislature has no power to exclude the shares of stock as an element of the valuation. The question of their taxability did not arise in that case. But it does arise in this case, and the result will be that, if this Court declares the capital stock to be exempt from taxation, then the capital stock must be stricken out of the Act of 1875, and cannot be looked to in the valuation; if the shares of stock are declared to be exempt from taxation, then they must be stricken out, and cannot be considered in the valuation. The State, however, prefers that the shares of stock, if taxable at all, shall be assessed directly to the owners under the general taxing laws.

It is clear that the capital stock forms an important element in ascertaining the aggregate value of this Company's property for the purpose of taxation. And though the property and franchises of the Company and the shares of stock are taxed, there yet remains property of great value to which the charter exemption applies.

But the Legislature may tax all these elements of corporate property separately, the capital stock and property to the Company, and the shares of stock to the stockholders.

In this case the property and shares would be assessed and taxed at their actual value, but the capital stock at its nominal value. Such a tax on the capital stock would be, not a property tax, but in

the nature of a privilege or franchise tax. Thus in the Code of Tennessee, Sec. 553:

"The business of banking, whether by banks chartered by the State or by authority of the United States, sixty cents on the hundred dollars of the capital stock," etc.

In *The Delaware Railroad Tax* case, 18 Wall., 206, will be found an instance of this kind of privilege tax on capital stock. An Act of Delaware provided "that the consolidated company should pay annually into the treasury of the State a tax of one-quarter of one per cent. on its *capital stock* of four hundred thousand dollars, the tax to be paid in semi-annual instalments on the first of January and July of each year."

In Burroughs on Taxation, Sec. 83, speaking of corporate taxation, it is said:

"When imposed upon its franchises the amount of the tax may be measured by its capital stock, either at par or at its nominal value, or by its dividends, or it may be a specific amount."

In the case of the *Bank of Commerce* v. *New York City*, 2 Black, 628, Mr. Justice Nelson says:

"The capital of the bank is taxed under existing laws in that State upon valuation like the property of individual citizens, and not as formerly on the amount of nominal capital, without regard to loss or depreciation. According to that system of taxation it was immaterial as to the character or description of property which constituted the capital, as the tax imposed was wholly irrespective of it. The tax was like one annexed to the franchise as a royalty for the grant," etc.

A statute of New York provided that if the dividends amounted to six per cent. the tax should be one-quarter of a mill upon the capital stock for each one per cent. of dividends so made and declared. Held, that this was a privilege, and not a property, tax.

People v. *Home Insurance Co.*, 92 N. Y., 328.

The Legislature can, for the purposes of taxation, regard the capital stock as represented by the aggregate amount of the shares of stock, or as represented by the property in which it has been invested, and tax it at its value; or it can regard it as a fixed, invariable quantity as declared in the charter, and impose the tax upon it at its nominal value. In the latter case no assessment is required; the taxing act itself makes the assessment.

In this view of the case certainly the railroad company enjoys a most valuable immunity in the exemption of its capital stock.

Reliance is made by defendant's counsel upon contemporaneous construction as an estoppel upon the State.

In every case in which this principle has been applied it will be found that the construction consisted in positive acts of State officials, and not in mere neglect to enforce a particular statute, as in this case.

But however that may be, no acts of State officials, however positive, repeated and continuous, can construe away the State's taxing power.

In *Chicago, etc., R.R.* v. *Iowa*, 94 U. S., 155, Mr. Chief Justice Waite says:

"It is a matter of no importance that the power of regulation now under consideration was not exercised for more than twenty years after this company was organized. A power of government which actually exists is not lost by non-use. A good government never puts forth its extraordinary powers except under circumstances which require it. That government is the best which, while performing all its duties, interferes the least with the lawful pursuits of its people."

AS TO THE TAXATION OF SHARES OF STOCK OWNED BY NON-RESIDENTS OF THIS STATE.

It will be remembered that the act of January 19, 1844, quoted above, provided for the taxation of shares of stock belonging to residents of this State; and that this act was passed before the charter of the Nashville & Chattanooga Railroad Company was granted by the Legislature. That charter was granted on the 11th of December, 1845.

The company was not fully organized until sometime in the year 1848, and the first subscription to its capital stock made by a non-resident of the State was on the 25th of April, 1848.

SEE STIPULATION OF COUNSEL. (p. 9.)

On the 4th day of February, 1848, the Legislature passed the following Act:

"That from and after the passage of this Act, all stock owned by non-resident stock-holders, in any of the incorporated companies in this State, shall be added to the list of property enumerated in the Act of 1836, chapter 13, section 1, and shall be subject to taxation, as other property in this State."

It will be observed that this Act for the taxation of the shares o[f]

non-residents was passed before any subscriptions had been made by such non-residents.

This, however, does not affect the question of the *power* of the Legislature to tax shares of non-residents, yet it has some significance.

This statute for the taxation of the shares of non-residents continued in force until the adoption of the Code of 1858, when the law was changed, not expressly but by implication.

In the enumeration of property subject to taxation, the Code, sections 541, sub-sections 7, 9-10 says:

"All capital lent or deposited, in or out of the State, at interest," etc.

"All investments, by inhabitants of this state, in stocks out of the State."

"All other stocks."

The law was again changed by the Act of March 7, 1869, quoted above.

On 25th day of March, 1873, an Act was passed collating all the different assessment Acts into one. This Act provides,

"That the basis of all assessments shall be as follows, viz: To assess the property in the district or ward in which it lies, or is known to be at the time of assessment; but all stock in banks, banking associations, or other corporations, or joint stock companies, shall be assessed in the place, town, ward or district, in which such bank, banking associations or other corporations are located." Section 4, sub-section 4.

This Act also repeated the provisions of the Act of 1869, referred to above.

Under the law, therefore, as it now exists, all shares of stock whether held by residents or non-residents of the State, are taxed at the location of the corporation.

FIRST.

The State has the power to tax shares of stock held by non-residents in a corporation created by, and located in the State.

The denial of this power is based on the legal proposition that personal property follows the person of the owner, and therefore, it is argued, since the *situs* of such property is at the domicile of the owner—the non-resident—it follows that both the subject matter and person are beyond the jurisdiction of the State, and, hence, not subject to its laws.

The correctness of the proposition, that movables follow the

person, is earnestly denied by Mr. Wharton in his work on "The Conflict of Laws." He insists that the legal fiction is not so firmly established, but that it is within the power and duty of the *courts* to disregard it whenever public policy, or convenience, requires it to be done.

Wharton's Conflict of Laws, Sec. ——.

On the other hand Judge Story maintains the correctness of the proposition, and doubts whether a court ought, upon its own general authority, to change or limit the rule, or fiction, of law.

But he expressly and repeatedly asserts that it is competent for the *Legislature* to abolish this legal fiction, and subject all property over which it has jurisdiction, to the operation of its own laws.

Story on Conflict of Laws, Sec. 377, 380, 385, 390, 393.

See also *Green* v. *Van Buskirk*, 5 Wallace, 307.

Same case, 7 Wallace, 139.

A State, then, may tax any and all property, over which it has jurisdiction, whether owned by its own citizens, or by non-residents.

In this State the revenue laws specifically direct the taxation of shares of stock in corporations held by non-residents; and the only question now is whether the State has such jurisdiction over this stock as to authorize the imposition of the tax.

Whatever property the State can, through its courts, seize and validly deprive the owner of his title thereto, such property the State has the power to subject to taxation.

Under the attachment laws of this State, the property of a non-resident debtor can be seized and subjected to the satisfaction of his debts.

Such property includes stock owned by him, and debts due him in the State. Now, in attachment cases, the jurisdiction of the Court depends upon the actual seizure of the property.

Cooper v. *Reynolds*, 10 Wallace, page 308.

Stocks and debts, therefore, must be located at the place where they are thus seized.

U. S. v. *Muller*, 11 Wallace, 263.

It is held that, not only has the Legislature the power to change or destroy the legal fiction—that movables follow the person—but that for the purposes of taxation this legal fiction has no existence.

As to tangible property having an actual *situs*, see *Hoyt* v. *The Commissioners*, 23 N. Y., 224.

As to choses in action.

People v. *Smith*, 88 N, Y., 576.

People v. *Gardner*, 51 Barbour, 352.

Catlin v. *Hull*, 21 Vt., 152.

People v. *Home Insurance Company*, 29 Cal., 533.

State v. *St. Louis County Court*, 47 Mo , 574.

Maltby v. *Reading Railroad Company*, 52 Pa., State, 140.

The case of the State tax on foreign-held bonds, 15 Wallace, 300, is in accord with the above decisions—see in this connection:

Railroad Company v. *Jackson*, 7 Wallace, 262.

Murray v. *Charleston*, 96 U. S., 432.

Railroad Company v. *Collector*, 100 U. S., 327.

See opinion of Justice Bradley in Appendix, 703.

The above cited authorities apply to the taxation of debts due to non-resident creditors by residents of the State.

But stock in an incorporated company has an actual *situs*, the location of the corporation.

The owner of stock is not strictly a creditor of the corporation, but is, in common with other stockholders, *indirectly* the owner of the property of the corporation. In thus becoming a stockholder in the corporation he submits himself to the jurisdiction of the State. In accepting the protection of the laws for his property, in the management and disposition of which, he has a voice, he must also submit to such impositions in the way of taxation as the State sees fit to make.

See *Ohio and Mississippi Railroad Company* v. *Wheeler*, 1 Black, 286.

Muller v. *Dows*, 94, U. S., 444.

Mr. Wharton says:

"What is the legal seat of a debt? It is clear that this is a question entirely distinct from that of the legal seat of a thing that occupies local space. Merchandise, stock in railway or mining corporations, furniture, all have more or less positively a territorial locality. The thing, in this sense, is subject to the law of the place in which it has a continuous lodgment."

Wharton's Conflict of Laws, Sec. 359.

See also *Story's Conflict of Laws*, Sec. 383, N., 4, 6.

In *Mayor, etc., of Nashville* v. *Thomas*, 5 Coldwell, 604, the Court say:

"Nothing here said is to be understood as implying that shares of stock owned by residents or non-residents, may not be made by legislative enactment, taxable at the place of the corporation of which it is an incident. The contrary opinion, if ever held or expressed in any decision of this Court in former years, is obsolete. Such opinion belongs to the age before stocks had become as they now are, common and practicable realities in trade and finance, having a being definite to the perceptions of persons owning or dealing in them, as if invested with the form of physical actuality."

In *Bedford* v. *Mayor, etc., of Nashville*, 7 Heiskell, 413, the Court say:

"Of course, we do not say that the Legislature would have the power to tax property, real or personal, in a county or city different from the place where the property is located; but it will be borne in mind that these stocks have in reality no locality, they are not located where the bank is situated; nor have they in reality a locality where the owner resides. It was held in the absence of special legislation upon the subject, that they came under the general head of personal property; and as they had no locality on account of the locality of the bank, that they must follow the residence of the owner, but as they had no actual locality at either place, the rule might be changed by legislation upon the subject."

See also *National Bank* v. *Commonwealth*, 9 Wallace, 353.

Tappan v. *National Bank*, 19 Wallace, 490.

First National Bank v. *Smith*, 45 Ill., 44.

Faxon v. *McCosh*, 12 Iowa, 527.

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APPENDIX.

AN ACT DECLARING THE MODE AND MANNER OF VALUING THE PROPERTY OF A RAILROAD COMPANY FOR TAXATION.

WHEREAS, It is provided in Section 28 of Article 2 of the Constitution of this State, "That all property shall be taxed," and further, that "All property shall be taxed according to its value, that value to be ascertained in such manner as the Legislature shall direct, so that taxes shall be equal and uniform throughout the State;" and,

WHEREAS, The four elements of property in all joint stock companies are: 1st, the capital stock; 2d, the corporate property; 3d, the franchises of the corporation; and, 4th, the individual stock of the shareholders; therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That each railroad company owning and operating a railroad in the State shall, on or before the first day of May of each year, make out and file with the Comptroller of the Treasury a complete schedule of all its property, real, personal, or mixed, setting forth therein the length in miles or fraction thereof of its entire road-bed, switches and side tracks, and showing how many miles or fractions thereof lie in the State, in each county of the State through which the road passes, and in each incorporated town, and the value of the whole and each part thereof, as sub-divided herein; the total amount of capital stock; the number of engines and their respective values; the gross annual receipts; the number of cars of all character, their classes and value; the number of depot buildings and warehouses, and other buildings, in what county and incorporated town located, and the value of each, including the lands and lots upon which the same are built; the value of all machine shops and stationary machinery and tools therein, and in what county and incorporated town located, including the land upon which the same are built; all real, personal, or mixed property belonging to the company, within the State, not enumerated above, with its value.

SEC. 2. *Be it further enacted*, That it shall be the duty of each

railroad company to furnish and file the schedule above mentioned with the Comptroller, as provided herein, at the time and in the manner specified, and when any company has filed the same, or neglected and refused so to do, the Comptroller shall notify the Governor of the fact, and thereupon the Governor shall appoint three freeholders, being citizens of the State, one of whom shall be resident in each grand division of the State, and neither of whom shall be interested in or connected in any way with the management of any railroad, and shall commission them as Railroad Tax Assessors for the State at large; and these Assessors shall, before entering upon their duties, respectively take and subscribe an oath before a Judge (who shall certify the same to the Governor), honestly, faithfully, and without fear, favor or partiality, to discharge all the duties imposed upon him as such Assessor.

SEC. 3. *Be it further enacted*, That the Railroad Tax Assessors provided for herein shall be appointed and commissioned by the Governor within ten days after said first day of May, and said Assessors shall meet in the city of Nashville on the first day of June thereafter, and the Comptroller shall pass to them the schedules filed in his office, and certify to them what railroads, if any, have failed or refused to file the same; and said Assessors shall proceed at once to ascertain, test and value the property belonging to said railroad company. In making such valuation they shall have in view and look to the capital stock, the corporate property, the franchises of each company, as well as the gross receipts, and the individual stock of each shareholder; and to ascertain these facts, they shall have the power to summon before them any person, and to call for the books of any railroad company, and administer oaths, and examine any person so summoned touching any matter necessary to enable them to discharge their duties, and may direct their writs or summons to any Sheriff in the State, to be executed in his county; and any person so called on to testify shall be guilty of perjury if he falsely testify. Having ascertained, in the manner indicated herein, the character and total value of all the property, wherever situated, of any railroad company, and after having deducted from the aggregate value one thousand dollars, as well as the real cash value of the individual shares,* they shall divide the same by the

*The words "as well as the real cash value of the individual shares," have been stricken out, the Supreme Court holding that these words made the Act repugnant to the Constitution. [*Mayor et al.* v. *Railroad Company*, 7 Lea, 661.]

number of miles in the entire length of the road, and the result shall be the value per mile of the property of such company for the purpose of taxation, and the value per mile of any such railroad, as ascertained above, shall be multiplied by the number of miles in the State, and the product thereof shall be the sum to be taxed to such railroad company for State purposes; and the value per mile, as ascertained, shall be multiplied by the number of miles or fractions thereof lying and being in any county, and the product shall be the sum to be taxed for county purposes; and having ascertained the said several sums to be taxed, they shall certify the same to the Comptroller, together with the facts.

AN ACT TO INCORPORATE THE NASHVILLE & CHATTANOOGA RAILROAD COMPANY.

[Acts Tennessee, 1845–6, pages 17 to 27]

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That for the purpose of establishing a communication by railroad between Nashville and Chattanooga, the formation of a company is hereby authorized which, when formed, shall be a body corporate by the name and style of "The Nashville & Chattanooga Railroad Company," and by said corporate name shall be capable in law to buy, receive by gift, hold, sell and convey real and personal estate, as hereinafter provided, make contracts, sue and be sued, to make by-laws, and to do all lawful acts properly incident to a corporation, and necessary and proper to the transaction of the business for which it is incorporated, and to have and use a common seal, and the same to alter and destroy at its pleasure, and shall have perpetual succession of members.

SEC. 2. Books for subscription of sixty thousand shares of the capital stock of said Company of twenty-five dollars each shall be opened on the first Monday in January, 1846, and shall be kept open for six days between the hours of ten o'clock in the morning and four o'clock in the evening of each of those days at the following places and by the following commissioners, to wit:

At Nashville, by James Overton, John M. Hill, Geo. W. Martin, Thomas Washington, John Shelby, Godfrey M. Fogg, John W. Walker, Jacob McGavock, J. Hugh Smith, W. W. Woodfolk, A. W. Vanleer, Samuel Watkins, Thomas Wells, John Thompson, Joseph B. Knowles, James Erwin, Felix R. Raines, Pleasant Smith,

J. J. Gill, John Nichol, West H. Humphreys, R. J. Meigs, A. V. S. Lindsley, Alexander Allison, and Robert I. Moore.

At Gallatin, by James A. Blackemore, Elijah Boddie, Henry B. Vaughan, Daniel S. Donalson, S. R. Anderson, and Wm. M. Blackemore.

At Shelbyville, by Robert Matthews, George Davidson, Thomas Dean, John Eakin, and W. C. Swanson.

At Gainesboro, by Thomas L. Bransford, Watson M. Cooke, Samuel E. Hare, and Richard P. Brooks.

At Lebanon, by Paulding Anderson, R. L. Caruthers, and Calvin Jackson.

At McMinnville, by George R. Smart, Wm. Black, Jesse Locke, Phillip Hoodenpyl, and L. D. Mercer.

At Franklin, by Thomas Parks, Wm. Park, Nicholas Perkins, Samuel Crockett, and Robert C. Foster.

At Murfreesboro, by Charles Ready, Edwin A. Keeble, Marman Spence, Lewis Garner, and L. H. Carney.

At Sparta, by James Snodgrass, John Warren, and William M. Young.

At Fayetteville, by John Clark, jr., John M. Bright, Robert Farquharson, Wm. T. Ross, James Fulton, and Wm. Bonner.

At Pulaski, by Andrew M. Ballentine, Thomas Martin, and Benjamin Carter.

At Winchester, by Benjamin Deckard, Mark Hutchins, James Harris, James Sharp, Thomas Wilson, and C. C. Garner.

At Chattanooga, by Robert M. Hooke, Benjamin Chandler, and John P. Long.

At Jasper, by Jackson Pryor, Daniel R. Rawlings, and John Herriford.

At Lewisburg, by Benjamin Williams, Ephraim Hunter, Jas. V. Ewing, Morgan Fitzpatrick, and Henry Hardin.

SEC. 3. The said commissioners, or a majority of them, at each of the places aforesaid, shall receive subscription for stock in the said railroad company during the time the said books are directed to be kept open, and on each share so subscribed shall demand and receive the sum of fifty cents, without which the subscription shall be void.

SEC. 4. As soon as the time for receiving subscriptions as aforesaid shall have expired, the said commissioners shall respectively

deposit all the money so received by them in some incorporated bank redeeming its notes in specie, to the credit of the Nashville & Chattanooga Railroad Company, and subject to the order of the President of the Board of Commissioners hereinafter appointed, and shall also forward a correct list of all the subscribers to the said stock, with the number of shares each subscriber has taken, to a Board of Commissioners to be composed of the following persons: John M. Bass, John M. Hill, Francis B. Fogg, Andrew Ewing, A. O. P. Nicholson, V. K. Stevenson, John Bell, Willoughby Williams, William Nichol, S. D. Morgan, Joseph T. Elliston, Joseph W. Horton, James A. Porter, James Overton, and John Shelby, who may establish rules to govern their proceedings, choose their own President, and appoint such other officers and agents as they may think proper, and prescribe their duties, and who, or a majority of whom, shall meet at Nashville on the third Monday in January next, ascertain the whole number of shares taken in the said company, and publish the same in some newspaper printed in Nashville, on or before the fourth Monday in January next; and if the number of four thousand shares shall have been subscribed, on each of which there shall have been paid the sum of fifty cents, the Nashville & Chattanooga Railroad Company shall be regarded as formed, and from thenceforth and from the day of the closing of the books of subscription as aforesaid, the said subscribers to the stock shall form a body politic and corporate in deed and in law, by the name and for the purpose aforesaid, and in all things to be represented by the Board of Commissioners aforesaid until the election of a Board of Directors as hereinafter prescribed.

Sec. 5. If on closing the books aforesaid, the number of four thousand shares shall not have been subscribed, then and in that case the said Board of Commissioners, by themselves or their agents, may receive subscriptions till the number of four thousand shares be taken, and whenever that number of shares shall be subscribed, the company shall be considered as formed, as having a corporate existence as aforesaid, and of which notice shall be given as hereinbefore directed, and may proceed to survey the route for the road and make an estimate of the cost of its construction. Nevertheless, no conclusive and binding location of the road shall be made by the Board of Commissioners, but the same to be left to the determination of the first Board of Directors chosen by the stockholders. And

the said Board of Commissioners may by themselves or their agents, at such times and places as they may think proper, and upon such terms as to time and manner of payment as they may deem expedient, receive additional subscriptions until the number of forty thousand shares shall have been subscribed, upon which the company may be formed and the subscribers shall thenceforth form a body corporate as aforesaid: *Provided*, the same shall be done on or before the first day of January, 1848. And for the residue of the original number of sixty thousand shares the said corporation, when organized, may, in like manner, receive additional subscriptions.

SEC. 6. In case more than sixty thousand shares shall have been subscribed on closing the books when they are first opened, the shares shall be reduced to that number by deducting the surplus shares from the highest subscribers, placing them on equality of numbers as far as can be done; and after such reduction, the holders of the remaining shares shall form the company and be interested therein in proportion to the number of shares which they may respectively hold.

SEC. 7. If, on closing the books on the first day of January, 1848, the number of forty thousand shares shall not have been subscribed, the money paid by each subscriber shall be returned to him by the said Board of Commissioners, after defraying the expenses of opening the books, and of making a survey and map of the route and estimate of the cost of the road, which the said commissioners are hereby authorized to have made as soon as practicable.

SEC. 8. The affairs of said company shall be managed by a Board of Directors to consist of fifteen, who shall be chosen by the stockholders from their own body, and a President of the company shall be elected by the Directors from among their own members, in such manner as the regulations of the corporation shall prescribe.

SEC. 9. As soon as the number of forty thousand shares shall have been subscribed, it shall be the duty of the Commissioners appointed to declare the same, to appoint a time for the stockholders to meet in Nashville, and give notice thereof by publication in some of the newspapers of Nashville, at which time and place the said stockholders, in person or by proxy, shall proceed to elect the Directors of the Company, and to enact all such regulations, rules and by-laws as may be necessary for the government of the corporation, and the transaction of its business. The persons elected Directors

at this meeting shall serve for such period, not exceeding one year, as the stockholders may direct; and at this meeting the stockholders shall fix on the day and place or places where the subsequent elections of Directors shall be held; and such elections shall thenceforth be annually made. But if the day of annual election should pass without any election of Directors, the corporation shall not be thereby dissolved, but it shall be lawful on any other day to hold and make such elections in such manner as may be prescribed by a by-law of the corporation.

SEC 10. The Board of Directors may fill up all vacancies which may occur in it during the period for which their Board shall have been elected; and in the absence of the President may fill his place by electing a President, *pro tempore.*

SEC. 11. All contracts and agreements authenticated by the President of the Board shall be binding on the company without seal, or such other mode of authentication may be used as the company by their by-laws may adopt.

SEC. 12. The Board of Directors shall not exceed, in their contracts, the amount of the capital of the corporation, and of the funds which the company may have borrowed and placed at the disposal of the Board; and in case they should do so, the President and Directors who may be present at the meeting at which such contract or contracts so exceeding the amount aforesaid, shall be made, shall be jointly and severally liable for the excesses both to the contractor or contractors and the corporation: *Provided*, That any one may discharge himself from such liability by voting against such contract or contracts, and causing such vote to be recorded on the minutes of the Board and giving notice thereof to the next general meeting of the stockholders.

SEC. 13. After the route of such railroad shall have been accurately surveyed and adopted, and a plat thereof deposited in the office of the Secretary of State, it shall not be lawful for any other railroad to be built, cut or constructed, in any way or manner, or by any authority whatsoever, running latterally within twenty miles of the route so adopted, unless by said company, or with the consent of the Board of Directors thereof for the time being.

SEC. 14. The said company shall have the exclusive right of transportation or conveyance of persons, goods, merchandise and produce over the said railroad by them to be constructed: *Provided*,

That the charge of transportation or conveyance shall not exceed thirty-five cents per hundred pounds on heavy articles, and ten cents per cubic foot on articles of measurement for every hundred miles, and five cents a mile for every passenger. *And provided also*, That the said company may, when they see fit, farm out their rights of transportation on said road, subject to the rates above mentioned.

SEC. 15. The Board of Directors may call for the payment of twenty-four and a half dollars on each share of stock in sums not exceeding two dollars in every thirty days: *Provided*, That twenty days' notice be given of such call in at least one public newspaper of the State in which any of the stockholders may reside; and a failure to pay or secure to be paid according to the rules of the company, any of the installments so-called as aforesaid, shall induce a forfeiture of the share or shares on which default shall be so made, and all payments thereon, and the same shall vest in and belong to the company, and may be restored to the owner or owners by the Board of Directors if they deem proper on the payment of all arrears on such shares, and legal interest thereon; or the Directors may waive the forfeiture after thirty days' default and sue the stockholder for the installment due, at their discretion.

SEC. 16. The stock of said company may be transferred in such manner and form as may be directed by the by-laws of the said corporation.

SEC. 17. The said company may at any time increase its capital to a sum sufficient to complete the said road, and stock it with everything necessary to give it full operation and effect, either by opening books for new stock, or by selling such new stock, or by borrowing money on the credit of the company, and on the mortgage of its charter and works; and the manner in which the same shall be done in either case, shall be prescribed by the stockholders at a general meeting; and any State, or any citizen, corporation, or company of this or any other State or country may subscribe for and hold stock in the said company, with all the rights, and subject to all the liabilities of any other stockholder.

SEC. 18. The Board of Directors shall, once in every year at least, make a full report on the state of the company, and its affairs to a general meeting of the stockholders, and oftener if directed by a by-law; and shall have power to call a general meeting of the stockholders when the board may deem it expedient.

SEC. 19. No person but a citizen of the United States and being a *bona fide* stockholder in his own right of at least forty shares which he shall have held at least three months previous to his election (except at the first election) shall be President, or a Director of the company; nor shall any stockholder vote in person or by proxy at any general, or other election (except the first) who shall not have held in his own right the shares on which he offers to vote, at least three months previous to such election.

SEC. 20. Stockholders may vote in person or by proxy, and in the election of Directors and in voting on all questions which come before a meeting of the stockholders, or which may be submitted to the decision of the stockholders in any other manner, the votes shall be taken according to the following scale: The owner of one or two shares shall be entitled to one vote; the owner of not less than three nor more than four shares shall be entitled to two votes; the owner of not less than five nor more than six shares shall be entitled to three votes; the owner of not less than seven nor more than eight shares to four votes; the owner of not less than nine nor more than eleven shares to five votes; the owner of not less than twelve nor more than fifteen shares to six votes; the owner of not less than sixteen nor more than twenty shares to seven votes; the owner of not less than twenty-one nor more than twenty-six shares to eight votes; the owner of not less than twenty-seven nor more than thirty-three to nine votes; the owner of not less than thirty-four nor more than forty shares to ten votes; and the owner of every ten shares above forty shall be entitled therefor to one vote; *Provided*, that no individual, corporation, or company shall be entitled to more than five hundred votes.

SEC. 21. The said company may purchase, have and hold in fee, or for a term of years any lands, tenements or hereditaments which may be necessary for said road, or appurtenances thereof, or for the erection of depositories, store houses, houses for the officers, servants or agents of the company or for workshops or founderies to be used for the said company, or for procuring timber, stones or other appurtenances, or for effecting transportation thereon.

SEC. 22. The said company shall have the right, when necessary, to construct the said road, or any branch thereof, across or along any public road or water course: *Provided*, That the said road and the navigation of such water course shall not be thereby obstructed;

and provided further, that such railroad shall not be located so near any turnpike road as to injure or prejudice the interests of the stockholders in such turnpike road, except upon such terms as may be agreed upon by the President and Directors of the same, on behalf of the stockholders.

SEC. 23. The said Company may purchase, have and hold any bridge or turnpike road over which it may be necessary to carry the said railroad; and when such purchase is made to hold the said bridge or turnpike road on the same terms, and with all rights which belong to the individual, individuals or corporations from which such purchase may be made: *Provided*, That the said Company shall not obstruct any public road without constructing another as convenient as may be.

SEC. 24. Where any lands or right of way may be required by the said Company for the purpose of constructing their road, and for want of agreement as to the value thereof, or for any other cause, the same cannot be purchased from the owner or owners, the same may be taken at a valuation to be made by five Commissioners or a majority of them, to be appointed by the Circuit Court of the county where some part of the land or right of way is situated, and the said Commissioners, before they act, shall severally take an oath before some Justice of the Peace, faithfully and impartially to discharge the duty assigned them. In making the said valuation, the Commissioners shall take into consideration the loss or damage which may occur to the owner or owners in consequence of the land being taken or the right of way surrendered, and also the benefit and advantage he, she or they may receive from the erection or establishment of the railroad or works, and shall state particularly the nature and amount of each, and the excess of loss and damage over and above the benefit and advantage shall form the measure of valuation of the said land or right of way. The proceedings of the said Commissioners, accompanied with a full description of the said land or right of way, shall be returned, under the hands and seals of a majority of the Commissioners to the court from which the commission issued, there to remain of record. In case either party to the proceedings shall appeal from the valuation to the next session of the court granting the commission, and give reasonable notice to the opposite party of such appeal, the court shall order a new valuation to be made by a jury, who shall be charged there-

with in the same term, or as soon as practicable, and their verdict shall be final and conclusive between the parties, unless a new trial shall be granted; and the lands or right of way, so valued by the Commissioners or jury, shall vest in the said company in fee simple, so soon as the valuation may be paid, or when refused, may be tendered. Where there may be an appeal, as aforesaid, from the valuation of Commissioners by either of the parties, the same shall not prevent the works intended to be constructed from proceeding; but where the appeal is by the company requiring the surrender, they shall be at liberty to proceed in their works only on condition, of giving to the opposite party a bond, with good security, to be approved of by the clerk of the court where the valuation is returned, in a penalty equal to double the said valuation, conditioned for the payment of said valuation and interest, in case the same be sustained; and in case it be reversed, for the payment of the valuation thereafter to be made by the jury and confirmed by the court: *Provided*, That when the land cannot be had by gift or purchase, the operations of the work are not to be hindered or delayed during the pendency of any proceeding to assess its value as aforesaid; nor shall any injunction or supersedeas be awarded by any judge or court to delay the progress of said work.

SEC. 25. In the absence of any contract with the said company in relation to lands, through which the said road may pass, signed by the owner thereof, or by his agent or by any claimant or person in possession thereof, which may be confirmed by the owner, it shall be presumed that the land upon which the said road may be constructed, together with a space of one hundred feet, on each side of the centre of said road, has been granted to the company by the owner thereof, and the said company shall have good right and title thereto, and shall have, hold, and enjoy the same, as long as the same be used only for the purpose of the road, and no longer, unless the person or persons owning the said land, at the time that part of the road which may be on said lands, was finished, or thoseclaiming under him, her or them, shall apply for an assessment for the value of said lands, as hereinbefore directed, within five years next after that part of said road was finished; and in case the said owner or owners, or those claiming under him, her, or them shall not apply for such assessment within five years next after the said part was finished, he, she or they shall be forever barred from recovering

the said lands, or having any assessment or compensation therefor: *Provided*, Nothing herein contained shall affect the right of *femes covert* or infants, until two years after the removal of their respective disabilities.

SEC. 26. If any person shall intrude upon the said railroad, or any part thereof, by any manner of use thereof, or the rights and privileges connected therewith without the permission, or contrary to the will of the said company, he, she or they shall forthwith forfeit to the said company all the vehicles that may be so intruded on the said road, and the same may be recovered by suit at law, and the person or persons so intruding may also be indicted for misdemeanor, and upon conviction, fined and imprisoned by any court of competent jurisdiction.

SEC. 27. If any person shall wilfully and maliciously destroy, or in any manner hurt, damage or obstruct the said railroad, or any bridge or vehicle used for, or in the transportation thereon, such person or persons so offending shall be liable to be indicted therefor and on conviction shall be imprisoned not more than six nor less than one month, and pay a fine not less than twenty dollars; and shall be further liable to pay all the expenses of repairing the same; and it shall not be competent for any person so offending against the provisions of this clause to defend himself by pleading or giving in evidence that he was the owner, or agent or servant of the owner of the land where such destruction, hurt, damage, injury or obstruction was done or caused at the time the same was caused or done.

SEC. 28. Every obstruction to the safe and free passage of vehicles on the said road shall be deemed a public nuisance and may be abated as such by an officer, agent or servant of the company, and the person causing such obstruction may be indicted and punished for erecting a public nuisance.

SEC. 29. The said company shall have the right to take, at the storehouses they may establish or annex to their railroad, all goods, wares, merchandise and produce intended for transportation, prescribe the rules of priorty, and charge and receive such just and reasonable compensation for storage as they, by rules, may establish (which they shall cause to be published) or as may be fixed by the agreement with the owner, which may be distinct from the rates of transportation: *Provided*, That the said company shall not charge

or receive storage on goods, wares, merchandise or produce which may be delivered to them at their regular depositories for immediate transportation, and which the company may have the power of transporting immediately.

SEC. 30. The profits of the company or so much thereof as the Board of Directors may deem advisable, shall when the affairs of the company will permit be semi-annually divided among the stockholders in proportion to the stock each may hold.

SEC. 31. The said company is hereby expressly prohibited from carrying on any banking operation, but may effect insurance on lives and property transported on the road.

SEC. 32. Whenever in the construction of said road it shall be necessary to cross and intersect any established road or way, it shall be the duty of the company to construct said road across such established road or way so as not to impede the passage or transportation of persons or property along the same; or where it shall be necessary to pass through the land of any individual it shall be their duty to provide for such individual a proper wagon way or ways across said road from one part of his land to the other.

SEC. 33. The said company shall possess such additional powers as may be convenient for the due and successful execution of the powers granted in their charter and for the successful construction and management of the work.

SEC. 34. This charter shall be amendable from time to time by the Legislature whenever the President and Directors shall unanimously petition for amendments, specifying in the petition the nature of such amendments; and when such amendments shall be adopted by the Legislature and submitted to the Directory, and be accepted and adopted unanimously by the President and Directors, they shall be obligatory on the stockholders and not otherwise.

SEC. 35. The President, Directors, Clerks, Agents, Officers and servants of said company shall be exempt from military duty, except in cases of invasion or insurrection, and shall also be exempt from serving on juries, and working on public roads.

SEC. 36. The company shall have full power and authority to purchase and own such number of slaves as may be necessary for the construction of the said road and for keeping the same in repair.

SEC. 37. If by decree or otherwise the said corporation shall be

dissolved, the President and Directors of said company are created trustees with such powers only as may be necessary to collect the debts due the company, preserve the property, pay the debts, and distribute the property and effects of the company to those who may be entitled thereto under the charter.

SEC. 38. The capital stock of said company shall be forever exempt from taxation, and the road, with all its fixtures and appurtenances, including workshops, warehouses, and vehicles of transportation, shall be exempt from taxation for the period of twenty years from the completion of the road, and no longer.

SEC. 39. The railroad authorized by this Act shall be commenced within three years after the passage of this Act, and shall be finished within six years thereafter, otherwise the charter hereby granted shall be void.

SEC. 40. Any individual or individuals, company, or body corporate, with permission of the Legislature of this State, may hereinafter construct branches to unite with the said Nashville and Chattanooga Railroad; and it shall be the duty of said company, when required, to receive on their road the full-loaded freight cars from such branches, and transport the same to their destination, and to return them, without changing the loads thereof, or charging for the transportation of the goods, wares, merchandise, and produce therein any greater rate of freight than they charge for similar goods, wares, merchandise, and produce in their own cars: *Provided*, That the company shall not be compelled to receive such cars on their road, unless they are constructed in the same manner, and are of equal strength with their own cars, of which the engineer of the main road shall be the judge; *and, provided*, That the company shall not be required to receive any car from such branches without receiving payment for at least twenty miles transportation; *and provided also*, That the said company shall be entitled in all respects to similar and equal privileges on any branches constructed to unite with their road, subject to the same restraints.

BROOKINS CAMPBELL,
Speaker of the House of Representatives.
H. M. WATTERSON,
Speaker of the Senate.

Passed December 11, 1845.

Office Supreme Court U. S.
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UNITED STATES SUPREME COURT.

OCTOBER TERM, 1885.

No. 935.

State of Tennessee, et. al.

vs.

George K. Whitworth, Collector of Revenue, for Davidson County, State of Tennessee.

BRIEF OF EAST & FOGG,

Of Counsel for Defendant in Error.

A. S. TAYLOR, STATIONER AND PRINTER, NASHVILLE.

UNITED STATES SUPREME COURT.

OCTOBER TERM, 1885.

No. 935.

STATE OF TENNESSEE, *et al.*

vs.

GEORGE K. WHITWORTH, COLLECTOR OF REVENUE, FOR DAVIDSON COUNTY, STATE OF TENNESSEE.

STATEMENT OF THE CASE.

1.

This proceeding in mandamus was commenced by the State of Tennessee, on its own behalf, as well as upon the relation of the County of Davidson and the City of Nashville, in the Circuit Court of that county, to compel the Defendant Collector of said county to assess for taxation, in favor of the State, County and City, the shares of stock owned by the individual shareholders in the Nashville, Chattanooga and St. Louis Railway.

The alleged duty required of the Defendant is imposed by the statutes of the State as follows: An Act of March 12, 1879, as amended by an Act of March 28, 1883, whereby all collectors of taxes—the Defendant being such—are made "*Assessors to assess all property which by mistake of law or fact, has not been assessed, whether the omission be for the particular year for which the Collector is acting or for any previous year or years.*" [See Supplement, from page 1, to page 3, for said Acts.]

The case was removed to the Circuit Court of the United States, sitting at Nashville, for the Middle District of Tennessee, and heard upon original petition, answer of Defendant Whitworth, and stipulations of the parties, whereupon the Court—Justice Mathews giving the opinion thereof—dismissed the petition, and ordered judgment for the Defendant. [See Opinion in Record, from pages 12 to 17 inclusive.]

The Nashville and Chattanooga Railroad Company was chartered by an Act of the General Assembly of the State of Tennessee, passed December 11, 1845. [See Supplement, from page 9 to page 21.]

This road, starting at Nashville, Tennessee, passed through the States of Alabama and Georgia, to Chattanooga, Tennessee, and its original capital stock was about two millions of dollars, divided into shares of $25.00 each.

The Nashville and Northwestern Railroad Company was chartered the 22d day of January, 1852, and started at Nashville, and run to Hickman, Kentucky. This road had a brief existence. The State had advanced to it—State aid, in bonds—to the amount of ten thousand dollars per mile, for the repayment of which, with interest, the State retained a statutory first mortgage lien. Subsequently the State forclosed this mortgage, and sold said corporation, and its property, to the Nashville & Chattanooga Railroad Company.

Thereupon the Nashville and Chattanooga Railroad Company, by proper proceedings, in the Chancery Court, under the 11th section of an Act passed January 26, 1871 [See Supplement, page 26], caused its name to be changed to "Nashville, Chattanooga and St. Louis Railway."

It also had its capital stock increased, to $6,486,049.44 (by mistake stipulated to be $6,670,331.20.) This took place August 12, 1873, and certificates were issued in shares of $25.00 each.

In the purchase of the Nashville and Northwestern Railroad, by the Act of the Legislature, and the decree of the Court, the

purchaser took all the benefits of its charter, including exemption from taxation, as described and limited therein. [See stipulation, page 10, and Decisions of Supreme Court of Tennessee, in State *vs.* Railroad, 12 Lea, 583. Railroad Co. *vs.* Hicks, 9 Baxter, 442.)

The 38th section of the charter of the Nashville and Chattanooga Railroad Company, and the 36th section of the charter of the Nashviile and Northwestern Railroad Company are identical, and are as follows:

"The capital stock of said company shall be forever exempt from taxation, and the road, with all its fixtures and appurtenances, including workshops, warehouses, and vehicles of transportation, shall be exempt from taxation for the period of twenty years from the completion of the road, and no longer."

The Nashville and Chattanooga Railroad was completed in 1855, and the twenty years exemption expired in 1875, and from that time all of its property of every description, has been assessed and taxed for State, County and Municipal purposes, under the act of March 20, 1875. [See Supplement, page 3 for this Act.]

The Nashville and Northwestern Railroad Company was not completed, until about 1868, and hence its twenty years exemption does not end until about 1888. (See State *vs.* Railroad, 12 Lea, 583.) Holding that the property formerly belonging to the company, and now owned by the Nashville, Chattanooga and St. Louis Railway, by virtue of its purchase, continues exempted until the expiration of the twenty years from completion.

It is stipulated that, the State has never assessed or attempted to assess, for taxation, the stock of the old Nashville and Chattanooga Railroad Company, which was issued in 1848, nor has she ever assessed or attempted to assess for taxation, the stock of any of the older railroad companies, issued about the same time.

It is claimed in this proceeding that the assessors appointed annually, since 1848, have either by mistake of law or fact, omitted to assess this and all other railroad stocks, and hence it be-

came the duty of Whitworth, under the back-assessment Acts of March 7, 1879, as amended by the Act of March 26, 1883, to assess this stock, since the date of its issuance, or as far back as relators may demand, since its issuance.

It is stipulated that the stock sought to be assessed, has been held for many years, by non-residents of the State, of the County, and of the City, as well as by residents of the State, County and City; and that the stock is transferable by assignment of the certificate. (See Cherry vs. Frost, 7 Lea, 1.)

And that assessments are to be made against the persons who were the owners on the 10th day of January of each year.

II.

ARGUMENT.

It will be admitted, that it was competent for the Legislature, under the Constitution of 1834, to make the exemption, set out in these charters, and this Constitution was in force when these charters were granted, and until the new Constitution of 1870.

State *vs.* Railroad, 12 Lea, 591.
Railroad Co. *vs.* Hicks, 9 Bax., 442.
Hope *vs.* Deaderick, 8 Hum., 1.
Union Bank, *vs.* State, 9 Yerger, 488–89.
Gardner *vs.* Stephens, 1 Heisk., 284.
Day *vs.* Joiner, 6 Baxter, 441.

The language of the charter is: "*The capital stock of said company shall be forever exempt from taxation.*"

It is the *thing* which the charter denominates "capital stock," which is forever exempt from taxation, and forever excluded from list of taxables—whether in the hands of the individual shareholders or elsewhere—wherever we may find the capital stock, *there* and *then*, we have found the thing which the Legislature purposed to exempt.

Our contention is that the thing exempted, is the shares of stock in the hands of the individual stockholder.

The charter is the best dictionary and interpreter, of its own terms and meaning.

By the second section of the charter it is declared that the "capital stock" of said company "shall be divided into 'shares' of twenty-five dollars each." Surely a person hunting for the "capital stock" must find it in the aggregate of these twenty-five dollar shares in the hands of the shareholders.

By referring to the 2d section we find this language used: "Books for subscription of sixty thousand shares of the *capital stock* of said company, of twenty-five dollars each, shall be opened," etc.

It is clear here that it is intended that the proposed shareholders in the company should subscribe; for what? The capital stock of the company. The language of that section makes it clear that "capital stock" there referred to the stock in the hands of the stockholders or shareholders, as the present English phrase is.

Again, where in the charter the corporate fund, in the hands of the company, is referred to, *capital* is the word used; thus in section 12 the following language is used: "The Board of Directors shall not exceed in their contracts the amount of the *capital* of the corporation, etc."

In section 17, this phrase occurs: "The said company may at any time increase its *capital*," not its *capital stock*.

This same idea runs through all the legislation appropriate to this charter. The Act of 1847–8, (see Supplement, page 22), empowering the city of Nashville to subscribe for 20,000 shares of the *capital stock* of this company, not $20,000 of the stock, but of the "*capital stock*."

Again; the Act of 1847–8, chapter 70, p. 46, was passed by the Legislature of Tennessee on the 21st day of January, 1848, and found in the appendix to this brief. This act was passed

before an organization had been made of the Nashville & Chattanooga Railroad Company. Up to this time there had been no Board of Directors elected, and this amendment to the charter may, therefore, be considered as a part and parcel of the original charter itself, as it went to the company.

Section 3rd is in the following language, page 47:

"*Be it enacted*, That the charter of said company be further so amended that the said company be required to estimate and pay semi-annually to the *several holders thereof* a sum equal to six per cent. per annum on the *capital stock* of said company actually paid in, to be charged to the cost of construction; *provided*, a majority of the stockholders at their first regular meeting agree thereto."

Here the Legislature has distinctly called the shareholders of the company, *the holders of the capital stock of said company.* There can be no possible misconstruction of the definition as given by the Legislature of Tennessee in this amendment of the charter of the company to the phrase "capital stock." That it meant in the charter elsewhere, and in the 38th section, what it means in this third section of the amendment of the charter, passed before the organization of the company, is too clear for equivocation, for here it is said that the company shall pay to the several holders of the capital stock of said company, a sum equal to six per cent. per annum upon it, and if the shareholders are stated to be holders of the capital stock, and the capital stock is exempted from taxation, the capital stock referred to must be the capital stock held by the shareholders.

In the case of the Railroad Companies *vs.* Gaines, 97 U. S., 697, there was an exemption exactly similar to the one under consideration, and it was contended on the part of the railroad companies that the capital stock of the company exempted was not only the capital which has been invested in the physical plant and equipments, but embraced also the latter.

This Court did not adopt that view, but held that the property was exempted for twenty years, and, therefore, the property of the company was no part of that which was forever exempt. It

would seem therefore necessarily to follow that the capital stock of the company which is forever exempt from taxation is a distinct thing altogether from any part of the property belonging to the company, which is subject to taxation. In the case last cited, the Chief Justice says: "There are undoubtedly many cases to be found in this and other Courts, where it has been held that an exemption of the capital stock of a corporation from taxation was equivalent to an exemption of the property into which the capital had been converted, and this (he says) has been because, taking the whole charter together, it was apparent the Legislature so intended;" thus making the charter its own interpreter and dictionary.

The case cited (97 U. S., 697), settles the question, that the clause forever exempting the "capital stock" from taxation, did not carry the exemption to the property into which the capital had been invested, viz: The physical plant and equipments, etc. Now what is left for it to operate upon? Certainly it must have some practical and beneficial operation. Our adversaries say that it had reference to the capital which has been subscribed for, and paid in by the stockholders, and that it should read thus: "As regards the capital paid in by subscribers, and which the company is required by the charter to invest in a road, fixtures, equipments, etc., this shall be forever exempt, but the property into which this capital is invested shall be exempt for twenty years." This argument goes upon the idea that the object of the exemption is the corporation, when, in fact, the object of the exemption is the "capital stock," and whoever holds capital stock is entitled to the exemption; and why should the exemption not have reference to the persons supplying the money originally, and who incurred the risk of the investment?

The Chancellor who decided the case of Memphis & Charleston R. R. Co. *vs.* Gaines, in his report says: "I have a strong impression that the words have been used in our railroad charters in the latter sense, and that the exemption was, as the Attorney-General argued, intended for the benefit of the stockholders by protecting their shares of stock from taxation." "The Legislature, while subjecting the tangible property of the com-

pany to taxation, like other property, intended to protect the stockholder from the additional tax on the value of his stock as personal property." (See Memphis and Charleston R. R. Co. *vs.* Gaines, 3 Tenn. Chan. Rep., 616–17.)

So here we have the Attorney-General of the State, in other cases than this, heretofore demanding of the State Courts a construction identically as we contend, and also we have the State Court concurring with him.

We insist that the case of Farrington *vs.* Tennessee, reported in 95 U. S., 679, demands the conclusion for which we contend. Farrington was a stockholder in the Union and Planters Bank, and the charter of the bank provided that the bank "shall pay to the State an annual tax of one-half of one per cent. on each share of the *capital stock* subscribed, which shall be in lieu of all other taxes." The State Court held:

1. *That the capital stock in a corporation, and the shares thereof owned by the stockholders, are two distinct properties, and an exemption of one does not thereby exempt the other.*

2. *It was no intention of the Legislature to exempt both capital stock and the shares of stock from taxation.* (See 8 Baxter, 539.)

This Court reversed the judgment of the State Court, and held that the words, "in lieu of all other taxes," meant in lieu of all other taxes that might be imposed on that subject, viz: The shares of capital stock.

Any contention which asserts that the "capital stock" means, or was intended to mean, the money in the hands of the company, paid in by the subscribers, and to be immediately invested in the physical plant, etc., and which was visible and tangible only for a short time as money, and did not exist "forever," is totally contradicting the charter.

"Capital stock" has been held to mean stock or shares in the hands of the individual holder. (See Wilson *vs.* Gaines, 3 Tenn. Chan., 616; Rapalge & Lawrence Dictionary"): and such is its popular use.

III.

THE EFFECT OF THE INCREASE OF THE CAPITAL.

After the purchase of the property of the Nashville & Northwestern company in 1873, the capital stock of the company was increased and the name of the company changed. Did the increase of the capital stock take the whole, or any part, from under the charter exemption?

Certainly this fact did not destroy the identity of the corporation, or substitute a new corporation in its stead, or in any manner annul any portion of the original charter.

In Cheraw & W. R. R. Co. *vs.* Commissioners, 88 North Carolina, 519, the company had exemption from taxation. By amendments to the charter, variations in the route were allowed, as well as deflection from the main line. Held, that these facts did not impair the rights of exemption.

See also Railroad *vs.* Courts of Mecklenberg, 87 N. C., 129.
Tomlinson *vs.* Branch, 15 Wall., 460–470.
Delaware Railroad Tax, 22 Wall., 206.
State *vs.* Woodruff, 36 N. J. Law, 94.

The conditions under which exemptions are lost are only in the following case, viz:

When a new corporation is formed out of two or more existing corporations, these latter ceasing to exist, the law forming the new corporation governs and controls in determining its rights and exemptions.

Shields *vs.* Ohio, 95 U. S., 319.
Railroad *vs.* Maine, 96 U. S., 499.

There has been no such merger or consolidation in the case of these two railroad companies.

IV.

The State of Tennessee, the County of Davidson and the City of Nashville have never sought in fact to tax these stocks, and such have been their action for over thirty-five years, each well knowing

that these stocks were being bought and sold with the understanding that they were not taxable.

But we have other ways of ascertaining what the Legislature in granting this charter meant by the use of that term. We are not left to the charter alone, but find assistance from contemporaneous construction. This charter was granted in 1845; the attempt to tax this stock was not made until 1884, by the present suit, nearly forty years having elapsed between the granting of the charter and the bringing of this suit. During the whole of this period of time, or the greater part of it, there have been enactments of the Legislature of Tennessee, authorizing the taxing of capital stocks of incorporated companies, manufacturing companies, mining companies, banking companies, insurance companies, and various other companies chartered by the Legislature of Tennessee. In some of these enactments taxing the stocks of incorporated companies, the assessors have been directed to tax the stocks of all incorporated companies in the State of Tennessee, except such as were exempt from taxation, and it will be admitted by the counsel representing the State in this case, that there were no exemptions from taxation of any incorporated companies, either their property or the shares of stock in the hands of the shareholders, other than those of railroads, the railroad companies having been exempted on the ground that they were public improvements; improvements that would be beneficial to the whole State, the exemption being granted to induce the putting of capital in investments that were not thought by the investors to be likely ever to pay them a commensurate dividend upon their capital, except indirectly in improving and building up the State itself. The policy of the law granting these exemptions is fully discussed in the case of Hicks *vs.* The Railroad Company in 9th Baxter, Tennessee Reports, in a very learned and able opinion by Judge McFarland, hereafter referred to. This being the case, where the term is used in the enactment of the State of Tennessee, directing that all stocks in the hands of shareholders were to be taxed, except those that are exempt, is a clear recognition of the intention of the Legislature to exempt the stocks of these various railroad companies. It was admitted in the argument of this case, and will not be denied by

the counsel who represent the State, that no attempt has ever been made to compel the payment of taxes by the holders of stock in the Nashville & Chattanooga Railroad Company during all these years, although the shareholders of other corporate companies were compelled to pay taxes upon their shares of stock. This being admitted, it is clearly a case of contemporaneous construction, the Legislature of the State itself subsequently recognizing it, and the various officers of the State Executive Department so construing it, that they did not assess for taxation any of the stock of this road for a series of nearly forty years. This will be conceded as a conclusive construction of the act, construction which will be binding upon the State itself.

Mr. Webster, in the case of the Providence Railroad Company *vs.* the city of Boston, referring to the habit of courts in looking to contemporaneous usage and subsequent acts of parties in the construction of statutes and contracts, said: "All law writers recognize, common sense recognizes, this principle of interpretation; but," he said, "the doctrine is expressed so accurately, tersely and completely by Sir Edward Sugden that I will quote his words." Sugden said: "One of the settled rules of law for the construction of ambiguities in ancient instruments is, that you may resort to contemporaneous usage to ascertain the meaning of the deed. Tell me what you have done under such a deed and I will tell you what that deed means." (Webster's Works, vol. 5, 191.)

Judge Cooley, in his book on Constitutional Limitations, page 67, makes the distinction between contemporaenous construction, subsequent construction, and practical construction. "Contemporaneous construction," he says, "may consist simply in the understanding with which the people received it at the time, or in acts done in putting it into operation, and which necessarily assume that it is to be construed in a particular way."

He says that little force is to be attached to the public understanding. "But where there has been a practical construction, which has been acquiesced in for a considerable period, considerations in favor of adhering to this construction sometimes present themselves to the courts with a plausibility and force which

it is not easy to resist." Later, in the same section, he says: "Especially where this has been given by officers in the discharge of their duty, and *rights have accrued in reliance upon it* which would be divested by a decision that the construction was erroneous, the argument *ab conveniendi* is allowed to have great weight."

In United States *vs.* Lytle, 5 McLean, 9, the opinion of the Court is: "But the executive branch of the Government is bound to give effect to the laws which regulate its duties, and this necessarily requires a construction of those laws, and where such construction has been acted on for a greater number of years, under the sanction of the law-making power, it becomes a serious question how far the judiciary can interfere."

In United States *vs.* Gilmore, 8 Wall., 330: "Construction of statutes * * * made by accounting officers of the Treasury, especially when so long continued as to become a rule of departmental practice, are entitled to great consideration, and will in general be adopted by this Court."

In Scanlan *vs.* Childs, 33 Wisconsin, 666: "The general understanding of the law, and constant practice under it for twenty years by the officers whose duty it is to execute it, unquestioned by any suit or public or private action to test or settle the construction of the courts, ought to be very strong, if not conclusive."

In McCullough *vs.* Maryland, Chief Justice Marshall says, in speaking of the practical construction: "I not put to rest by the practice of the Government, ought to receive a considerable impression from that practice. An exposition of the Constitution deliberately established by legislative acts, on the faith of which immense property has been advanced, ought not to be lightly disregarded."

In Edwards *vs.* Darby, 12 Wheat., 209: "The contemporaneous construction of those who were called upon to act under the law and were appointed to carry out its provisions, is entitled to great respect."

2. Opinions of Attorney-General, 558, approved in 10, *Ibid*, 52: "Wherever an act of Congress has, by actual declaration, or by continued usage and practice, received a construction at the proper department, and that construction has been acted on for a succession of years, it must be a strong and palpable case of error and injustice to justify a change in the interpretation given to it."

"An undeviating usage of thirty years must govern in its judicial construction." [Dwarris on Statutes, 693; 1 Cranch, 299; 5 Ida, 22; 1 Blatchf., 218; 17 Mass., 144; 2 *Ibid*, 477.]

That there can be no mistake that this was the construction given by the State of Tennessee through its legislative body and through the action of its executive department, is made very plain by the fact that the Attorney-General of the State of Tennessee, in arguing this question before the various courts of the country, and finally in the Supreme Court of the United States, insisted that the exemption intended to be operative under section 38 of the charter of the Memphis & Charleston Railroad was intended to exempt the capital stock in the hands of the shareholders, and not the capital of the company. This was gravely argued by the highest officer of the State of Tennessee entitled to represent it in the courts of the country, and puts its legal construction upon the Acts of its Legislature. The brief of the Attorney General is not before us, but the fact that he did so argue is stated by the Chancellor in the opinion before cited. [Page 616, 3d Cooper's Chancery Reports.]

In the decision of Hicks *vs.* The Railroad, 9 Baxter, 451, before mentioned, this language is used:

"Upon this question it may be added that where there has been no judicial construction of a clause of the Constitution, the courts have given great weight to the construction given to the clause by other departments of the Government. [Stewart *vs.* Land, 1 Cranch, 299; Martin *vs.* Hunter, 1 Wheaton, 351; 6 Wheaton, 418; 12 Wheaton, 290.] Several successive Legislatures that met while this Constitution was in force, a period of thirty-six years, granted charters of incorporation with total or

partial exemptions for a time, and during the entire period the power was never questioned. On the contrary, all departments of the Government acquiesced and obeyed the laws thus passed, and under these nearly all of our public improvements have been constructed. This uniform action upon the part of the State authorities is entitled to great weight. Upon this question we conclude that the Legislature had the power to stipulate for the exemption in question."

Under these circumstances, would the Court permit, at this late day, the State authorities to change their view; to now, under the claimed necessities of the State, undertake to give a different construction to that term, and to tax, for forty years back, the shares of this company in the hands of its present owners? What grave injustice this would involve. The stock of this company is now, and has been for some time, quoted upon the market at below forty cents on the dollar. If the claim of the State of Tennessee be now substantiated and a tax assessed upon that stock for forty years, it would not only operate to confiscate the stock in the hands of the stockholders and consume the whole of its market value, but would make the holder of the stock liable to a large indebtedness, perhaps two or three times the amount of the value of the stock, to the State of Tennessee. If the State has a right to tax this stock, the county will insist upon its right, the city of Nashville will insist upon its right to levy back taxes. Back taxes for a period of even ten years under these circumstances, would more than operate to confiscate the stock. An innocent stockholder, purchasing the stock without notice of any such claim upon the part of the State of Tennessee having been formed, and understanding that the exemption under the charter had been construed in this manner, and to operate in his behalf, would, in this way, be robbed of his property and brought into debt to the great State of Tennessee.

Judge Cooley, in his book on Constitutional Limitations, as before cited, page 67, holds that where rights have accrued under reliance upon such construction, which would be divested by a decision that this construction was erronous, it would be mani-

festly unjust, and contrary to public policy, that any such construction, after so long a period of time, should be set aside and held to be error.

V.

AS REGARDS SHARES HELD BY NON-RESIDENTS.

The case of the foreign bondholders, 15 Wall., 300, holds:

1. That the power of taxation of a State is limited to persons, property and business within her jurisdiction.

We insist that the holder of a share in this railroad company, who is a non-resident of the State, in case the State is seeking to assess the same for taxation, or who is a non-resident of the county, in case the county is seeking to have the same assessed; or who is a non-resident of the city, where the latter is seeking to assess the same, can not be assessed, because:

1. The person is beyond the jurisdiction of the State, county and city.

2. The property is beyond the jurisdiction of the State, county and city.

3. If it could be held to be a business, that too is beyond the jurisdiction of each.

In this case the railroad lies, and is operated, in the States of Tennessee, Alabama, Georgia and Kentucky. It passes through probably ten or fifteen counties, and many more municipal corporations.

If Tennessee can give a taxable situs to the stock, so can the other States; each claiming to locate it all, and tax it all, and each State can give it a situs, for county and municipal purposes as well as State purposes. Tennessee gives for its situs, Davidson county, Nashville. Alabama gives for its situs, Jackson, county, Stevenson. Kentucky gives for its situs, Fulton county, Hickman; and Georgia, Dade county, Hooker, thus making this stock taxable at four different places, and liable for three assessments at each place, making twelve assessments upon the whole.

Section 30 of the charter (See supplement, page 19), is as follows:

"The profits of the company, or so much thereof as the Board of Directors may deem advisable, shall, when the affairs of the company will permit, be semi-annually divided among the stockholders, in proportion to the stock each may hold."

As respects non-residents, there are but two ways in which the payment of the tax can be secured: The one way is to sell the stock under a distress warrant, and issue a new certificate to the purchaser. The other, to compel the railroad company to pay the amount out of the dividends going to the stockholders, from the company. The State of Tennessee has provided for both modes. (See Supplement, pp. 1 and 2.)

The stockholder has the legal right to have his proportion of the dividends declared and paid him, and the State has no power to violate the contract which he has with the company, to pay the same to him. The law which takes from the shareholder any part of his dividends, impairs the contract between him and the company. (See 15 Wall., 300.) And if a company were to retain it out of his dividends, it could not justify its act by a subsequent statute of the State. It might as well, as against a New York creditor, or an English creditor, who held a note against a Tennessee debtor, seek to tax the debt, and compel the debtor to pay the same, and then take credit on the note for the amount. A dividend declared is the property of the shareholder, and the company is bound to pay the same to him upon demand.

Of course, all the argument is made upon the assumption that the State did not retain the right to do these things in the original charter, as was done in the case of national banks, and the shareholders therein.

EDWARD H. EAST,
Of Counsel for Defendant in Error.

SUPPLEMENT.

CHAPTER LXXIX.

An Act for the more rigid collection of the revenue.

SECTION 1. Be it further enacted by the General Assembly of the State of Tennessee, That all collectors of taxes are hereby made assessors, to assess all property which by mistake of law or facts has not been assessed, and it is hereby made the duty of such collectors, in all cases whereby property has not been assessed, but on which taxes ought to be paid by law, to immediately assess the same and proceed to collect the taxes, and if the owner of the property admits the liability of the property to taxation but disputes the assessment he may have a revaluation before the Judge or Chairman of the County Court at any time within one month, and in such case the Judge or Chairman aforesaid may hear proof and fix the assessment or valuation, and this shall be final.

SEC. 2. Be it further enacted, That in case the owner of the property denies the right of the State, county, city or town, to tax his property, and claims that it is exempt by virtue of the Constitution or any law or ordinance, but raises no question as to the amount or value fixed in assessing the property, then such collector shall submit the facts to the Comptroller as to the State tax, to the Judge or Chairman of the County Court as to the county tax, and to the Mayor of the city or town as to the municipal corporation taxes, and if by these several officers or any one of them he is directed to proceed to the collection of the taxes, he shall immediately and without any delay obtain from any Justice of the Peace of his county, a warrant or warrants for said taxes and which shall be served on the owner of said property, and set for trial before some Justice of the Peace in said county and the warrants may be for the State, county and municipal corporation taxes jointly or separately, and all Justices of the Peace are hereby given jurisdiction to try all such cases, no matter what the amount, and the same shall be tried without delay, with the right to appeal to either party to the Circuit Court, and the appeal shall go the next succeeding term unless the court is in session to which the

appeal is taken, and in that case the appeal shall be to the term being held and shall be entered and tried at that term.

SEC. 3. Be it further enacted, That in case the owner of the property disputes both the assessment as to amount and the right to tax his property, then he shall be allowed 10 days to have a re-assessment before the Judge or Chairman of the County Court, and at the end of the 10 days the tax collector shall proceed as under the second Section.

SEC. 4. Be it further enacted, That in cases arising under this law, it shall be the duty of the courts, the Circuit and Supreme Courts, in case of appeal to hear and determine the questions arising in preference to all other cases.

SEC. 5. Be it further enacted, That every collector of taxes making assessments and collecting taxes under the provisions of this Act, shall keep a book upon which he shall enter all property assessed by him, giving a description of the property so assessed, the amount of taxes so collected, and upon his final settlement [with] the Comptroller and with the county court, shall file a copy of the same under oath, stating that said copy contains a true and a perfect list of all taxes so collected by him.

SEC. 6. Be it further enacted, That this act take effect from and after its passage, the public welfare requiring it.

Passed March 7, 1876.

CHAPTER CLXXXI.

An Act to amend an Act passed March 7, 1879, entitled "An Act for the more rigid collection of the revenue."

SECTION 1. Be it enacted by the General Assembly of the State of Tennessee, That section 1 of an Act passed March 7, 1879, entitled "An Act for the more rigid collection of the revenue," be so amended as to read as follows: That all collectors of taxes are hereby made assessors to assess all property which by mistake of law or fact has not been assessed, whether the omission be for the particular year for which the collector is acting, or for any previous year or years, and it

is hereby made the duty of such collectors, in all cases where property has not been assessed, but on which taxes ought to be paid by law, to immediately assess the same, and proceed to collect the taxes; and such collectors are hereby authorized to assess and collect taxes upon property for all the years for which taxes ought to have been paid upon such property, but have not been paid in consequence of the errors or omissions of former collectors or assessors, and if the owner of the property admits the liability of the property to taxation, but dispute the assessment, he may have a revaluation before the Judge or Chairman of the county court, at any time within one month, and in such case the Judge or Chairman aforesaid may hear proof and fix the assessment or valuation, and the same shall be final.

SEC. 2. Be it further enacted, That this Act take effect from and after its passage, the public welfare requiring it.

Passed March 26, 1883.

CHAPTER LXXVIII.

An Act declaring the mode and manner of valuing the PROPERTY of a Railroad Company for taxation.

[Acts Tennessee, 1875, pp. 100 to 107.]

WHEREAS, It is provided in Section 28 of Article 2 of the Constitution of this State, that "All property shall be taxed," and further, that "All property shall be taxed according to its value, that value to be ascertained in such manner as the Legislature shall direct, so that taxes shall be equal and uniform throughout the State"; and,

WHEREAS, The four elements of property in all joint stock companies are: 1st, the capital stock; 2d, the corporate property; 3d, the franchises of the corporataion; and, 4th, the individual stock of the shareholders; therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That each railroad company owning and operating a railroad in the State shall, on or before the first day of May of each year, make out and file with the Comptroller of the Treasury a complete schedule of all its property, real, personal, or

mixed, setting forth therein the length in miles or fraction thereof of its entire road-bed, switches and side tracks, and showing how many miles or fractions thereof lie in the State, in each county of the State through which the road passes, and in each incorporated town, and the value of the whole and each part thereof, as sub-divided herein; the total amount of capital stock; the number of engines and their respective values; the gross annual receipts; the number of cars of all character, their classes and value; the number of depot buildings and warehouses, and other buildings, in what county and incorporated town located, and the value of each, including the lands and lots upon which the same are built; the value of all machine shops and stationary machinery and tools therein, and in what county and incorporated town located, including the land upon which the same are built; all real, personal, or mixed property belonging to the company, within the State, not enumerated above, with its value:

SEC. 2. *Be it further enacted*, That it shall be the duty of each railroad company to furnish and file the schedule above mentioned with the Comptroller, as provided herein, at the time and in the manner specified, and when any company has filed the same, or neglected and refused so to do, the Comptroller shall notify the Governor of the fact, and thereupon the Governor shall appoint three freeholders, being citizens of the State, one of whom shall be resident in each grand division of the State, and neither of whom shall be interested in or connected in any way with the management of any railroad, and shall commission them as Railroad Tax Assessors for the State at large; and these Assessors shall, before entering upon ther duties, respectively take and subscribe an oath before a Judge (who shall certify the same to the Governor), honestly, faithfully, and without fear, favor, or partiality, to discharge all the duties imposed upon him as such Assessor.

SEC. 3. *Be it further enacted*, That the Railroad Tax Assessors provided for herein shall be appointed and commissioned by the Governor within ten days after said first day of May, and said Assessors shall meet in the city of Nashville on the first day of June thereafter, and the Comptroller shall pass to them

the schedules filed in his office, and certify to them what railroads, if any, have failed or refused to file the same; and said Assessors shall proceed at once to ascertain, test and value the PROPERTY belonging to said railroad company. In making such valuation they shall have in view and look to the capital stock, the corporate property, the franchises of each company, as well as the gross receipts, and the individual stock of each shareholder; and to ascertain these facts, they shall have the power to summon before them any person, and to call for the books of any railroad company, and administer oaths, and examine any person so summoned touching any matter necessary to enable them to discharge their duties, and may direct their writs of summons to any Sheriff in the State, to be executed in his county; and any person so called on to testify shall be guilty of perjury if he shall falsely testify. Having ascertained, *in the manner indicated herein*, the character and total *value of all* the *property, wherever* situated, of any railroad company, and after having deducted from the aggregate value one thousand dollars, as well as the real cash value of the individual shares, they shall divide the same by the number of miles in the entire length of the road, and the result shall be the value per mile of the property of such company for the purpose of taxation, and the value per mile of any such railroad, as ascertained above, shall be multiplied by the number of miles in the State, and the product thereof shall be the sum to be taxed to such railroad company for State purposes; and the value per mile, as ascertained, shall be multiplied by the number of miles or fractions thereof lying and being in any county, and the product shall be the sum to be taxed for county purposes; and having ascertained the said several sums to be taxed, they shall certify the same to the Comptroller, together with the facts.

SEC. 4. *Be it further enacted*, That if any Railroad Company fail or refuse to file the schedule herein required, or having filed the same, the Assessors regard the same as not fair and just, said Assessors are hereby empowered and authorized to ascertain the items and value of any property, in such manner as they may deem best, and shall add ten per cent. to the taxes of said

company so failing to file any schedule, or filing one not fair and just.

SEC. 5. *Be it further enacted*, That any two of said Assessors shall be and constitute a lawful Board of Assessors, and may do and perform all the duties enjoined upon them under this Act; and they may, jointly or singly, examine the property of any railroad company, and each shall be allowed his actual traveling expenses, and a per diem of five dollars, while employed in the performance of the duties enjoined upon them by this Act, to be paid upon the warrant of the Comptroller, issued to each upon his stated account, out of any money in the Treasury.

SEC. 6. *Be it further enacted*, That when said Assessors shall have complied with the provisions of this Act, and certified to the Comptroller the amount to be taxed to each railroad company, together with all the facts, it shall be the duty of the Comptroller to submit the same forthwith to the Governor, Secretary of State, and the Treasurer, these being hereby constituted a Board of Examiners; and if, in the opinions of these three, or any two of them, the valuation so made and reported of any railroad company is too low, or is not just and fair, it shall be the duty of the Governor to appoint another Board of Assessors, and said last Board shall proceed at once to value the property, under the provisions of this Act, and to this end are empowered to do all the acts and things permitted herein to the first Board, and may adopt any facts found by the first Board; and the last Board shall certify the result, as soon as possible, to the Comptroller, and the same shall be final; *Provided*, that upon the happening of the contingencies of a "too low," unjust, or unfair valuation of said property by the first appointed Assessors, or three successors so appointed by the Governor in pursuance of this Act, no per diem shall be allowed for the services so allowed.

SEC. 7. *Be it further enacted*, That when the valuation of the property of any railroad company shall be ascertained and certified to the Comptroller, according to the provisions of this Act, it shall be the duty of the Comptroller to ascertain the amount of taxes due the State from each, and notify the company of the

same, by letter or otherwise; and he shall certify to the County Court Clerk of each county in which a railroad line lies, the amount to be taxed in said counties respectively for county purposes; and likewise to the mayor of any incorporated town, the amount to be taxed by such town; and the County Court Clerk shall enter the same upon the Collector's books, specifying the amount of taxes to be collected as now provided by law.

SEC. 8. *Be it further enacted*, That the taxes so assessed in behalf of the State shall be due as other taxes, and if the same be not paid to the Comptroller within the time allowed other taxpayers, he shall proceed to collect the same in the manner following: He shall issue a distress warrant against the company for the amount thereof, and the same may be issued to any Sheriff in the State, whose duty it shall be to levy the same upon any personal property of the company to be found in his county, and sell the same as other property of like character is sold for taxes; and in the collection of said tax, the Comptroller is hereby empowered to do all acts and things which any collector of revenue is authorized to do by law; and should he fail to realize the taxes and costs from the sale of personal property or otherwise, he is hereby authorized and empowered to expose to public sale, to the highest bidder, all the property of such defaulting railroad company lying and being in this State, together with its franchises, after giving thirty days notice of the time and place of sale, in some newspuper published in the city of Nashville, and to make a deed of conveyonce thereof to the purchaser; and it shall be the duty of the Governor to issue his warrants to any of the Sheriffs along the line of said railroad, authorizing and commanding the Sheriffs to put such purchaser into full and complete possession of such road, and all its property, and the Sheriff shall execute the same at once.

SEC. 9. *Be it further enacted*, That the collector of taxes for any county shall collect the amount due to the county as is now provided by law in the case of delinquents.

SEC. 10. *Be it further enacted*, That the property of any railroad company lying or being in any city or incorporated town,

may be taxed for city purposes upon a valuation thereof made upon the same basis as of the property belonging to a citizen tax payer.

SEC. 11. *Be it further enacted*, That each and every railroad company which will accept as a special amendment to its charter for a period of ten years from the first day of January, 1875, and that will pay annually to the Treasurer of the State one and one-half per cent. on the gross receipts, from all sources, of such company, *shall be exempt from the provisions of the foregoing Sections of this Act*, and the payment of said one and one-half per cent. upon all gross earnings of such road, shall be in full *of all taxation*. The return of such gross receipts by said company to be made under oath by the President, Superintendent and Treasurer, to the Treasurer of the State, on the 10th day of January of each and every year, for the calendar year preceding, the first return and payment to be made on the 10th day of January, 1876, for the preceding year, and so for each succeeding year. If any railroad company, accepting the provisions of this Section, fails to make the return and pay in *the tax* in this section provided for, by the 15th day of January of each year, it shall be the duty of the Governor, Comptroller and Treasurer to demand the books, or papers, or both, of such company, necessary to make up such estimate, and when so made up by them shall be the amount of gross earnings for which such road shall be liable to pay on, and the Treasurer is hereby authorized to collect *the tax* thereon herein provided for, as other collectors of taxes in the State are authorized by law to do, together with a penalty of ten per cent. additional for failing to make the return, or payment, or for a false return as provided for. Such railroads as do not accept the provisions of this Section, shall be taxed as provided for in the foregoing Sections of this Act; *Provided*, that the charters of all railroad companies accepting the provisions of this Section shall be hereby so amended that after the expiration of said ten years, no exemptions of any property of said railroad company shall exist, but be placed upon the same footing as the property of other corporations or individuals. The charters of all railroad companies accepting the provisions of this Section, are hereby so amended that,

after the lapse of the ten years aforesaid, every provision contained in the provisions of the charter of said companies, exempting their property from taxation, is hereby declared null and void, in as full and ample a manner as if the same was specially set forth in their respective charters.

SEC. 12. *Be it further enacted*, That this Act shall take effect from and after its passage, the public welfare requiring it.

Passed March 20, 1875.

LEWIS BOND,
Speaker of the House of Representatives.
THOMAS H. PAINE,
Speaker of the Senate.

Approved March 24, 1875.

JAMES D. PORTER,
Governor.

CHAPTER I.

An Act to incorporate the Nashville & Chattanooga Railroad Company.
[Acts Tennessee, 1845-6, pages 17 to 27.]

SECTION 1. Be it enacted by the General Assembly of the State of Tennessee, That for the purpose of establishing a communication by railroad between Nashville and Chattanooga, the formation of a company is hereby authorized, which, when formed, shall be a body corporate by the name and style of "The Nashville & Chattanooga Railroad Company," and by said corporate name shall be capable in law to buy, receive by gift, hold, sell and convey, real and personal estate, as hereinafter provided, make contracts, sue and be sued, to make by-laws, and to do all lawful acts properly incident to a corporation, and necessary and proper to the transaction of the business for which it is incorporated, and to have and use a common seal, and the same to alter and destroy at its pleasure, and shall have perpetual succession of members.

SEC. 2. Books for subscription of sixty thousand shares of the

capital stock of said company, of twenty-five dollars each, shall be opened on the first Monday in January, 1846, and shall be kept open for six days, between the hours of ten o'clock in the morning and four o'clock in the evening of each of those days, at the following places, and by the following Commissioners, to-wit:

At Nashville by James Overton, John M. Hill, George W. Martin, Thomas Washington, John Shelby, Godfrey M. Fogg, John W. Walker, Jacob McGavock, J. Hugh Smith, W. W. Woodfolk, A. W. Vanleer, Samuel Watkins, Thomas Wells, John Thompson, Joseph B. Knowles, James Erwin, Felix R. Raines, Pleasant Smith, J. J. Gill, John Nichol, West H. Humphreys, R. J. Meigs, A. V. S. Lindsley, Alexander Allison and Robert I. Moore.

At Gallatin, by James A. Blackmore, Elijah Boddie, Henry B. Vaughn, Daniel S. Donelson, S. R. Anderson and William M. Blakemore.

At Shelbyville, by Robert Matthews, George Davidson, Thomas Dean, John Eakin and W. C. Swanson.

At Gainesboro, by Thomas L. Bransford, Watson M. Cooke, Samuel E. Hare and Richard P. Brooks.

At Lebanon, by Paulding Anderson, R. L. Caruthers and Calvin Jackson.

At McMinnville, by George R. Smartt, William Black, Jesse Locke Phillip Hoodenpyl and L. D. Mercer.

At Franklin, by Thomas Parks, William Park, Nicholas Perkins, Samuel Crockett and Robert C. Foster.

At Murfreesboro, by Charles Ready, Edwin A. Keeble, Marman Spence, Lewis Garner and L. H. Carney.

At Sparta, by James Snodgrass, John Warren and William M. Young.

At Fayetteville, by John Clark, Jr., John M. Bright, Robert Farquharson, William T. Ross, James Fulton and William Bonner.

At Pulaski, by Andrew M. Ballentine, Thomas Martin and Benjamin Carter.

At Winchester, by Benjamin Decherd, Mark Hutchins, James Harris, James Sharp, Thomas Wilson and C. C. Garner.

At Chattanooga, by Robert M. Hooke, Benjamin Chandler and John P. Long.

At Jasper, by Jackson Pryor, Daniel R. Rawlings and John Herriford.

At Lewisburg, by Benjamin Williams, Ephraim Hunter, James V. Ewing, Morgan Fitzpatrick and Henry Hardin.

SEC. 3. The said Commissioners, or a majority of them, at each of the places aforesaid, shall receive subscription for stock in the said railroad company during the time the said books are directed to be kept open, and on each share so subscribed shall demand and receive the sum of fifty cents, without which the subscription shall be void.

SEC. 4. As soon as the time for receiving subscriptions as aforesaid shall have expired, the said Commissioners shall respectively deposit all the money so received by them in some incorporated bank redeeming its notes in specie, to the credit of the Nashville & Chattanooga Railroad Company, and subject to the order of the President of the Board of Commissioners hereinafter appointed, and shall also forward a correct list of all the subscribers to the said stock, with the number of shares each subscriber has taken, to a Board of Commissioners, to be composed of the following persons: John M. Bass, John M. Hill, Francis B. Fogg, Andrew Ewing, A. O. P. Nicholson, V. K. Stevenson, John Bell, Willoughby Williams, William Nichol, S. D Morgan, Joseph T. Elliston, Joseph W. Horton, James A. Porter, James Overton and John Shelby—who may establish rules to govern their proceedings, choose their own President and appoint such other officers and agents as they may think proper, and prescribe their duties, and who, or a majority of whom, shall meet at Nashville on the third Monday in January next—ascertain the whole number of shares taken in the said company, and publish the same in some newspaper printed in Nashville on or before the fourth Monday in January next; and if the number of four thousand shares shall have been subscribed, on each of which there shall have been paid the sum of fifty cents, the Nashville & Chattanooga Railroad Company shall be regarded as formed, and thenceforth and from the day of the closing of the books of subscription, as aforesaid, the said subscribers to the stock shall form a body politic and corporate in deed and in law, by the name and for the purpose aforesaid, and in all things to be represented by the Board of Commissioners aforesaid until the election of a Board of Directors as hereinafter prescribed.

SEC. 5. If, on closing the books aforesaid, the number of four thousand shares shall not have been subscribed, then and in that case

the said Board of Commissioners, by themselves or their agents, may receive subscriptions till the number of four thousand shares be taken, and whenever that number of shares shall be subscribed, the company shall be considered as formed, as having a corporate existence as aforesaid, and of which notice shall be given as hereinbefore directed, and may proceed to survey the route for the road, and make an estimate of the cost of its construction. Nevertheless, no conclusive and binding location of the road shall be made by the Board of Commissioners, but the same to be left to the determination of the first Board of Directors chosen by the stockholders. And the said Board of Commissioners may, by themselves or their agents, at such times and places as they may think proper, and upon such terms as to time and manner of payment as they may deem expedient, receive additional subscriptions until the number of forty thousand shares shall have been subscribed, upon which the company may be formed, and the subscribers shall thenceforth form a body corporate as aforesaid; Provided the same shall be done on or before the first day of January, 1848. And for the residue of the original number of sixty thousand shares the said corporation, when organized, may, in like manner, receive additional subscriptions.

SEC. 6. In case more than sixty thousand shares shall have been subscribed on closing the books when they are first opened, the shares shall be reduced to that number by deducting the surplus shares from the highest subscribers, placing them on equality of numbers as for as can be done; and after such reduction, the holders of the remaining shares shall form the company, and be interested therein in proportion to the number of shares which they may then respectively hold.

SEC. 7. If, on closing the books on the first day of January, eighteen hundred and forty-eight, the number of forty thousand shares shall not have been subscribed, the money paid by each subscriber shall be returned to him by the said Board of Commissioners, after defraying the expenses of opening the books, and of making a survey and map of the route and estimate of the cost of the road, which the said Commissioners are hereby authorized to have made as soon as practicable.

SEC. 8. The affairs of said company shall be managed by a Board of Directors, to consist of fifteen, who shall be chosen by the stockholders from their own body, and a president of the company shall

be elected by the directors from among their own members, in such manner as the regulations of the corporation shall prescribe.

SEC. 9. As soon as the number of forty thousand shares shall have been subscribed, it shall be the duty of the Commissioners appointed to declare the same, to appoint a time for the stockholders to meet in Nashville, and give notice thereof by publication in some of the newspapers of Nashville, at which time and place the said stockholders, in person or by proxy, shall proceed to elect the directors of the company, and to enact all such regulations, rules and by-laws as may be necessary for the government of the corporation and the transaction of its business. The persons elected directors at this meeting shall serve for such period, not exceeding one year, as the stockholders may direct; and at this meeting the stockholders shall fix on the day and place or places where the subsequent elections of directors shall be held; and such elections shall thenceforth be annually made. But if the day of annual election should pass without any election of directors, the corporation shall not be thereby dissolved, but it shall be lawful on any other day to hold and make such election in such manner as may be prescribed by a by-law of the corporation.

SEC. 10. The Board of Directors may fill up all vacancies which may occur in it during the period for which their Board shall have been elected; and in the absence of the president may fill his place by electing a president *pro tempore*.

SEC. 11. All contracts and agreements authenticated by the president of the Board shall be binding on the company without seal, or such other mode of authentication may be used as the company by their by-laws may adopt.

SEC. 12. The Board of Directors shall not exceed, in their contracts, the amount of the capital of the corporation, and of the funds which the company may have borrowed and placed at the disposal of the Board; and in case they should do so, the president and directors who may be present at the meeting at which such contract or contracts so exceeding the amount aforesaid, shall be made, shall be jointly and severally liable for the excesses, both to the contractor or contractors and the corporation: Provided, that any one may discharge himself from such liability by voting against such contract or contracts, and causing such vote to be recorded on the minutes of the Board, and giving notice thereof to the next general meeting of the stockholders.

SEC. 13. After the route of such railroad shall have been accurately surveyed and adopted, and a plat thereof deposited in the office of the Secretary of State, it shall not be lawful for any other railroad to be built, cut or constructed, in any way or manner, or by any authority whatsoever, running laterally within twenty miles of the route so adopted, unless by said company, or with the consent of the Board of Directors thereof for the time being.

SEC. 14. The said company shall have the exclusive right of transportation or conveyance of persons, goods, merchandise and produce over the said railroad by them to be constructed: Provided, that the charge of transportation or conveyance shall not exceed thirty-five cents per hundred pounds on heavy articles, and ten cents per cubic foot on articles of measurement for every hundred miles, and five cents a mile for every passenger; And provided also, that the said company may, when they see fit, farm out their rights of transportation on said road, subject to the rates above mentioned.

SEC. 15. The Board of Directors may call for the payment of twenty-four and a half dollars on each share of stock in sums not exceeding two dollars in every thirty days: Provided, that twenty days' notice be given of such call in at least one public newspaper of the State in which any of the stockholders may reside; and a failure to pay, or secure to be paid, according to the rules of the company, any of the installments so called, as aforesaid, shall induce a forfeiture of the share or shares on which default shall be so made, and all payments thereon, and the same shall vest in and belong to the company, and may be restored to the owner or owners by the Board of Directors, if they deem proper, on the payment of all arrears on such shares, and legal interest thereon; or the directors may waive the forfeiture after thirty days' default, and sue the stockholders for the installments due, at their discretion.

SEC. 16. The stock of said company may be transferred in such manner and form as may be directed by the by-laws of the said corporation.

SEC. 17. The said company may at any time increase its capital to a sum sufficient to complete the said road, and stock it with every thing necessary to give it full operation and effect, either by opening books for new stock, or by selling such new stock, or by borrowing money on the credit of the company, and on the mortgage of its charter and works; and the manner in which the same shall be done in either case shall be prescribed by the stockholders at a general

meeting; and any State, or any citizen, corporation or company of this or any other State or country, may subscribe for and hold stock in said company, with all the rights and subject to all the liabilities of any other stockholder.

SEC. 18. The Board of Directors shall once in every year, at least, make a full report on the state of the company and its affairs to a general meeting of the stockholders, and oftener if directed by a by-law, and shall have power to call a general meeting of the stockholders when the Board may deem it expedient.

SEC. 19. No person but a citizen of the United States, and being a *bona fide* stockholder in his own right of, at least, forty shares, which he shall have held at least three months previous to his election (except at the first election) shall be president or a director of the company; nor shall any stockholder vote in person or by proxy at any general or other election (except the first) who shall not have held in his own right the shares on which he offers to vote at least three months previous to such election.

SEC. 20. Stockholders may vote in person or by proxy, and in the election of directors, and in voting on all questions which come before a meeting of the stockholders, or which may be submitted to the decision of the stockholders in any other manner, the vote shall be taken according to the following scale: the owner of one or two shares shall be entitled to one vote; the owner of not less than three nor more than four shares shall be entitled to two votes; the owner of not less than five nor more than six shares shall be entitled to three votes; the owner of not less than seven nor more than eight shares to four votes; the owner of not less than nine nor more than eleven shares to five votes; the owner or not less than twelve nor more than fifteen shares to six votes; the owner of not less than sixteen nor more than twenty shares to seven votes; the owner of not less than twenty-one nor more than twenty-six shares to eight votes; the owner of not less than twenty-seven nor more than thirty-three shares to nine vote; the owner of not less than thirty-four nor more than forty shares to ten votes; and the owner of every ten shares above forty shall be entitled therefor to one vote: Provided, that no individual, corporation or company shall be entitled to more than five hundred votes.

SEC. 21. The said company may purchase, have and hold in fee, or for a term of years, any lands, tenements or hereditaments which

may be necessary for said road or appurtenances thereof, or for the erection of depositories, storehouses, houses for the officers, servants, or agents of the company, or for workshops or foundries to be used for the said company, or for procuring timber, stones, or other materials necessary for the construction of the road or its appurtenances, or for effecting transportation thereon.

SEC. 22. The said company shall have the right, when necessary, to construct the said road, or any branch thereof, across or along any public road or water-course; Provided, that the said road and the navigation of such water course shall not be thereby obstructed; And provided further, that such railroad shall not be located so near any turnpike road as to injure or prejudice the interests of the stockholders in such turnpike road, except upon such terms as may be agreed upon by the president and directors of the same, on behalf of the stockholders.

SEC. 23. The said company may purchase, have and hold any bridge or turnpike road over which it may be necessary to carry the said railroad; and when such purchase is made to hold the said bridge or turnpike road on the same terms, and with all rights which belong to the individual, individuals or corporation from which such purchase may be made; Provided, that the said company shall not obstruct any public road without constructing another as convenient as may be.

SEC. 24. Where any lands or right of way may be required by the said company for the purpose of constructing their road, and for want of agreement as to the value thereof, or from any other cause, the same cannot be purchased from the owner or owners, the same may be taken at a valuation to be made by five commissioners, or a majority of them, to be appointed by the circuit court of the county where some part of the land or right of way is situated, and the said commissioners, before they act, shall severally take an oath before some justice of the peace, faithfully and impartially to discharge the duty assigned them. In making the said valuation the commissioners shall take into consideration the loss or damage which may occur to the owner or owners in consequence of the land being taken or the right of way surrendered, and also the benefit and advantage he, she or they may receive from the erection or establishment of the railroad or works, and shall state particularly the nature and amount of each, and the excess of loss and damage over and above the benefit and advantage shall form the measure of valuation of the said land

or right of way. The proceedings of the said commissioners, accompanied with a full description of the said land or right of way, shall be returned, under the hands and seals of a majority of the commissioners to the court from which the commission issued, there to remain of record. In case either party to the proceedings shall appeal from the valuation to the next session of the court granting the commission, and give reasonable notice to the opposite party of such appeal, the court shall order a new valuation to be made by a jury, who shall be charged therewith in the same term, or as soon as practicable, and their verdict shall be final and conclusive between the parties, unless a new trial shall be granted; and the lands or right of way, so valued by the commissioners or jury, shall vest in the said company in fee simple, so soon as the valuation may be paid, or when refused, may be tendered. Where there may be an appeal, as aforesaid, from the valuation of commissioners by either of the parties, the same shall not prevent the works intending to be constructed from proceeding; but where the appeal is by the company requiring the surrender, they shall be at liberty to proceed in their works only on condition of giving to the opposite party a bond, with good security, to be approved of by the clerk of the court where the valuation is returned, in a penalty equal to double the said valuation, conditioned for the payment of said valuation and interest, in case the same be sustained; and in case it be reversed, for the payment of the valuation thereafter to be made by the jury and confirmed by the court; Provided, that when the land cannot be had by gift or purchase, the operations of the work are not to be hindered or delayed during the pendency of any proceeding to assess its value as aforesaid; nor shall any injunction or supersedeas be awarded by any judge or court to delay the progress of said work.

Sec 25. In the absence of any contract with the said company in relation to lands through which the said road may pass, signed by the owner thereof, or by his agent, or any claimant or person in possession thereof, which may be confirmed by the owner, it shall be presumed that the land upon which the said road may be constructed, together with a space of one hundred feet on each side of the center of said road has been granted to the company by the owner thereof, and the said company shall have good right and title thereto, and shall have, hold and enjoy the same as long as the same be used only for the purposes of the road, and no longer, unless the person or persons owning the said land at the time that part of the road which may be on said land was finished, or those claiming under him, her or

them shall apply for an assessment for the value of the said lands, as hereinbefore directed, within five years next after that part of said road was finished. And in case the said owner or owners, or those claiming under him, her or them shall not apply for such assessment within five years next after the said part was finished, he, she or they shall be forever barred from recovering the said land, or having any assessment or compensation therefor: Provided, nothing herein shall affect the right of *femmes covert* or infants until two years after the removal of their respective disabilities.

SEC. 26. If any person shall intrude upon the said railroad, or any part thereof, by any manner of use thereof, or of the rights and privileges connected therewith, without the permission, or contrary to the will of said company, he, she or they shall forthwith forfeit to the said company all the vehicles that may be so intruded on said road, and the same may be recovered by suit at law; and the person or persons so intruding may also be indicted for misdemeanor and upon conviction, fined and imprisoned by any court of competent jurisdiction.

SEC. 27. If any person shall willfully and maliciously destroy, or in any manner hurt, damage or obstruct the said railroad, or any bridge, or any vehicle used for, or in the transportation thereon, such person or persons so offending shall be liable to be indicted therefor, and on conviction shall be imprisoned not more than six nor less than one month, and pay a fine not less than twenty dollars; and shall be further liable to pay all the expenses of repairing the same; and it shall not be competent for any person so offending against the provisions of this clause to defend himself by pleading or giving in evidence that he was the owner, or agent, or servant of the owner of the land where such destruction, hurt, damage, injury or obstruction was done or caused, at the time the same was caused or done.

SEC. 28. Every obstruction to the safe and free passage of vehicles on the said road, shall be deemed a public nuisance, and may be abated as such by an officer, agent or servant of the company, and the person causing such obstruction may be indicted and punished for erecting a public nuisance.

SEC. 29. The said company shall have the right to take, at the storehouses they may establish or annex to their railroad, all goods, wares, merchandise and produce intended for transportation, prescribe the rules of priority, and charge and receive such just and reasonable compensation for storage as they, by rules, may establish

(which they shall cause to be published), or as may be fixed by agreement with the owner, which may be distinct from the rates of transportation: Provided, that the said company shall not charge or receive storage on goods, wares, merchandise or produce which may be delivered to them at their regular depositories for immediate transportation, and which the company may have the power of transporting immediately.

SEC. 30. The profits of the company, or so much thereof as the Board of Directors may deem advisable, shall, when the affairs of the company will permit, be semi-annually divided among the stockholders in proportion to the stock each may hold.

SEC. 31. The said company is hereby expressly prohibited from carrying on any banking operations, but may effect insurance on lives and property transported on the road.

SEC. 32. Whenever, in the constructien of said road, it shall be necessary to cross or intersect any established road or way, it shall be the duty of the company to construct said road across such established road or way so as not to impede the passage or transportation of persons or property along the same; or where it shall be necessary to pass the land of any individual, it shall be their duty to provide for such individual a proper wagon-way or ways across said road from one part of his land to the other.

SEC. 33. The said company shall possess such additional powers as may be convenient for the due and successful execution of the powers granted in this charter, and for the successful construction and management of the work.

SEC. 34. This charter shall be amendable from time to time by the Legislature whenever the president and directors shall unanimously petition for amendments, specifying in the petition the nature of such amendments; and when such amendments shall be adopted by the Legislature and submitted to the directory, and be accepted and adopted unanimously by the president and directors, they shall be obligatory on the stockholders, and not otherwise.

SEC. 35. The president, directors, clerks, agents, officers and servants of said company shall be exempt from military duty, except in cases of invasion or insurrection, and shall also be exempt from serving on juries and working on public roads.

SEC. 36. The company shall have full power and authority to

purchase and own such number of slaves as may be necessary for the construction of the said road, and for keeping the same in repair.

SEC. 37. If by decree or otherwise the said corporation shall be dissolved, the president and directors of said company are created trustees, with such powers only as may be necessary to collect the debts due the company, preserve the property, pay the debts, and distribute the property and effects of the company to those who may be entitled thereto under the charter.

SEC. 38. The capital stock of said company shall be forever exempt from taxation, and the road with all its fixtures and appurtenances, including workshops, warehouses and vehicles of transportation, shall be exempt from taxation for the period of twenty years from the completion of the road, and no longer.

SEC. 39. The railroad authorized by this Act shall be commenced within three years after the passage of this Act, and shall be finished within six years thereafter, otherwise the charter hereby granted shall be void.

SEC. 40. Any individual or individuals, company or body corporate, with permission of the Legislature of this State may hereafter construct branches to unite with the said Nashville & Chattanooga Railroad; and it shall be the duty of said company, when required, to receive on their road the full loaded freight-cars from such branches, and transport the same to their destination, and to return them, without changing the loads thereof, or charging for the transportation of the goods, wares, merchandise and produce therein, any greater rate of freight than they charge for similar goods, wares, merchandise and produce in their own cars: Provided, that the company shall not be compelled to receive such cars on their road, unless they are constructed in the same manner, and are of equal strength with their own cars, of which the engineer of the main road shall be the judge: And provided, that the company shall not be required to receive any car from such branches without receiving payment for at least twenty miles transportation: And provided also, that the said company shall be entitled in all respects to similar and equal privileges on any branches constructed to unite with their road, subject to the same restraints.

BROOKINS CAMPBELL,
Speaker of the House of Representatives.
H. M. WATTERSON,
Speaker of the Senate.

Passed December 11, 1845.

An Act to authorize the subscription on behalf of the town of Nashville, of twenty thousand shares of stock in the Nashville & Chattanooga Railroad Company.

Whereas, By an Act of the Mayor and Aldermen of the town of Nashville, passed on the 9th day of July, 1847, it was enacted that the Mayor of the town of Nashville be authorized, for and on behalf of said corporation, to subscribe for twenty thousand shares of the capital stock of the Nashville & Chattanooga Railroad Company upon certain conditions specified in said Act, among which conditions was the following, viz: That if the Legislature of Tennessee at its next session shall, on a *bona fide* application by the Board of Mayor and Aldermen of Nashville, fail or refuse to amend their charter so as to permit them to issue bonds, or scrip, or borrow money, on the faith of the corporation, to meet the calls or installments to become due upon their subscriptions, then it shall be optionary with the Board of Mayor and Aldermen of Nashville to continue their subscription for the whole or any number of shares of stock thus taken, or withdraw their subscription entirely, receiving in payment their ten thousand dollars (to be paid at the time of subscription) or so much thereof as might not be consumed in the necessary expenses accruing during the continuance of their subscription; and,

Whereas, Since the passage of this Act the said Legislature of the State of Tennessee, upon application of the Mayor and Aldermen of the town of Nashville, have, by an amendment of the charter of said corporation, in an Act of the General Assembly, passed on the 9th day of December, 1847, conferred upon said corporation the power and authority aforesaid, with other power and authority; and

Whereas, Said subscription for said stock, authorized by said Act of said corporation, has not as yet, in fact, been made; now, therefore,

Section 1. Be it enacted by the Mayor and Aldermen of the Town of Nashville, That the Mayor of the town of Nashville be and he is hereby authorized and empowered for and on behalf of the corporation of said town, and in their name, to subscribe for twenty thousand shares of the capital stock of the Nashville & Chattanooga Railroad Company, subject to the conditions hereinafter mentioned.

Sec. 2. Be it further enacted, That the sum of ten thousand dollars be, and the same is hereby appropriated out of any money in the Treasury not otherwise appropriated, to pay the sum of fifty cents on each share of stock thus subscribed, which sum is to be paid at the date of the subscription.

Sec. 3. Be it further enacted, That the subscription shall be made subject to the following restrictions and conditions:

1. The railroad company shall be bound to receive and accept the bonds or scrip of the corporation of Nashville, if offered to them, as authorized by the Act of the General Assembly aforesaid, at its par value, in payment of the calls on the subscription.

2. The construction of the road shall not be commenced until forty thousand shares of the stock of said company, in addition to that taken by this corporation, shall also be subscribed.

Sec. 4. Be it further enacted, That it shall be the duty of the Mayor aforesaid, in making the subscription aforesaid, to file with the Board of Commissioners of the railroad company a copy of this Act, and that he receive from said Board or their agent a written acceptance of the subscription under its terms, which shall be filed in the archives of the corporation.

Sec. 5. Be it further enacted, That so much of the said Act of the Mayor and Aldermen of the town of Nashville above referred to as comes within the purview and meaning of this Act be and the same is hereby repealed.

ALEX ALLISON, Mayor.

W. GARRETT, Recorder.

Passed December 23, 1847.

CHAPTER XXVI.

An Act to authorize the towns of Nashville, Murfreesboro, Shelbyville and Winchester to raise money on loan, or to issue their bonds to pay the calls on stock subscribed, or to be subscribed, in the Nashville & Chattanooga Railroad.

[Act of 1847-8.]

Whereas, The town of Nashville, by its Board of Mayor and Aldermen, has authorized the Mayor of said town to subscribe for 20,000 shares of the capital stock of the Nashville & Chattanooga Railroad, which subscription has not, however, yet in fact, been made; and,

Whereas, It is necessary that further power should be extended to the corporate authorities of said town, to enable them to pay the calls upon said stock; therefore,

Section 1. Be it enacted by the General Assembly of the State of Tennessee, That the town of Nashville be, and is hereby authorized, through its Mayor and Aldermen, and by the subscription of its Mayor on the books of the Nashville & Chattanooga Railroad Company, to subscribe for twenty thousand shares of the capital stock of said company.

Sec. 2. Be it enacted, That the Mayor and Aldermen of Nashville be, and are hereby authorized to raise money on loan, by pledging the faith of the corporation, by pledging a portion of its taxes, by mortgage or otherwise, as to them may seem best, to an amount not exceeding what may be demanded for the calls upon the stock aforesaid, and said loan may be created for such length of time, and payable in such manner as to the said Mayor and Aldermen may be deemed best.

Sec. 3. Be it enacted, That the said Mayor and Aldermen be, and they are hereby authorized, if to them it shall seem best, instead of making a loan as aforesaid for the whole amount of said calls, or any part thereof, to issue the bonds of the said corporation, under the corporate seal, to be signed by its Mayor, and countersigned by its Recorder, for the whole or any part of said calls which may be made from time to time by said railroad company on said stock.

Sec. 4 Be it enacted, That the bonds so to be issued shall be in sums not less than five hundred dollars each; that they shall not bear a greater rate of interest than six per centum per annum, and shall not be payable at a greater distance of time from their respective dates than thirty years.

Sec. 5. Be it enacted, That a like privilege of subscription, and a like power to issue bonds and to raise money on loan, be extended to the following incorporated towns, to-wit: Murfreesboro, Shelbyville and Winchester: Provided, that the Mayor and Aldermen of the towns of Murfreesboro Shelbyville and Winchester, may issue bonds for their stock, or in negotiating loans under this Act, of a denomination as low as one hundred dollars.

Passed December 9, 1847.

NOTE.—The acts of the Mayor and Aldermen of Nashville, and the proceedings of the Board of Directors are inserted hereafter, in connection with other similar matters.

CHAPTER LXX.

An Act to amend the Charter of the Nashville & Chattanooga Railroad Company.

(Acts 1847-8.)

Section 1. Be it enacted by the General Assembly of the State of **Tennessee**, That the Board of Commissioners of the Nashville & **Chattanooga** Railroad is hereby authorized and empowered to appoint **three judges** and two clerks for the purpose of holding an election **for fifteen** directors of said company on the 24th of January, 1848, **and upon the certificate of said judge, the said directors shall be authorized to qualify as directors, and to make all rules, regulations and by-laws necessary for the government of said company and management of its affairs not inconsistent with the general laws of the land.**

Sec. 2. Be it enacted, That the Board of Directors of said company **shall have** power to appoint three judges and two clerks **from year to year**, for the purpose of holding elections for directors.

Sec. 3. Be it enacted, That the charter of the company be **further so amended** that the said company be required to estimate **and pay semi-annually** to the several holders thereof a sum equal to **six per cent.** per annum on the capital stock of said company actually **paid in**, to be charged to the cost of construction; provided, a majority of the stockholders at their first regular meeting agree thereto.

Passed January 21, 1848.

NOTE—Up to this time there was no Board of Directors; hence **there could be no unanimous petition of the president and directors, and no unanimous acceptance and adoption**, as prescribed in section **34 of the charter**, and this mode was adopted in lieu of the one **therein prescribed** for the ascertaining of the consent of the corporation to an amendment of its charter.

An Act to authorize the subscription on behalf of the town of Nashville of twenty thousand shares of stock in the Nashville & Chattanooga Railroad Company.

Section 1. Be it enacted by the Mayor and Aldermen of the Town **of Nashville**, That the Mayor of the town of Nashville be, and he is **hereby authorized and empowered**, for and on behalf of the corpora-

tion of said town, and in their name, to subscribe for twenty thousand shares of the capital stock of the Nashville & Chattanooga Railroad Company, subject to the conditions hereinafter prescribed.

Sec. 2 Be it further enacted, That the sum of ten thousand dollars be, and the same is hereby appropriated out of any moneys in the Treasury not otherwise appropriated, to pay the sum of fifty cents on each share of stock thus subscribed, which sum is to be paid at the date of the subscription.

Sec. 3. Be it further enacted, That the subscription shall be made subject to the following restrictions and conditions:

First—That if the Legislature of Tennessee, at its next session, shall, on a *bona fide* application by the Board of Mayor and Aldermen of Nashville, fail or refuse to amend their charter so as to permit them to issue bonds or scrip, or borrow money on the faith of the corporation, to meet the calls or installments to become due on their subscriptions, then it shall be optionary with the Board of Mayor and Aldermen of Nashville, to continue their subscription for the whole of any number of shares of stock thus taken, or withdraw their subscription entirely, receiving in payment their ten thousand dollars, or so much thereof as may not be consumed in the necessary expenses accruing during the continuance of their subscription.

Second. The railroad company shall be bound to receive and accept the bonds or scrip of the corporation at its par value in payment of the calls on this subscription.

Third. The construction of the road shall not be commenced until forty thousand shares of the stock, in addition to that taken by this corporation, shall also be subscribed.

Sec. 4. Be it further enacted, That it shall be the duty of the Mayor of this Board, on making the subscription aforesaid, to file with the Board of Commissioners of the railroad company a copy of this act, and that he receive from said Board a written acceptance of this subscription under its terms which he shall file in the archives of the corporation.

JOHN A. GOODLETT, Mayor.

WM. GARRETT, Recorder.

Passed July 9, 1847

[Act of January 26, 1871.]

SEC. 11. Be it further enacted, That the Chancery Courts of this State be, and they are hereby authorized to change the name of any private corporation upon application and good reasons shown by the directors of such private corporation.

I.

The object of the plaintiff was, originally, to have these stocks assessed for taxation, retrospectively, to the year of the issuance thereof, in 1848, for *State*, county, and city purposes.

1. See petition for mandamus, page 3 of Record, as follows :

"Petitioner states that by the act of March 7th, 1879, as amended by the act of March 27th, 1883, all collectors of taxes are made assessors to assess any *property* which, by mistake of law or fact, has not been assessed *for any previous year or years*."

2. The attorneys for the several plaintiffs, during the argument in the court below, seeing that the enormity of their claim would probably make against their case, and that it would amount to confiscation, modified their demands in this respect and asked the court to regard the mandamus as not seeking "to hold either the stock or the present owner liable therefor, nor that the assessment can go back prior to the year 1875." (See opinion of Justice Matthews, page 14, folio 37.)

3. Since the case has reached this court, the Legislature of Tennessee, by an act passed March 9th, 1885, limited all assessments under these back-taxing acts to three years prior to the passage of said act, to March 9th, 1882.

Should the court hold that the stock sought to be assessed and taxed, in this case, liable, we doubt not that this act limiting the right to go back beyond March 9, 1882, would be repealed. The cities and counties would demand it, and the State would cheerfully accede to their demand, as her pecuniary interest lies in that direction.

II.

Plaintiff says that "no reliance can be placed upon contemporaneous construction, because the stock was never taxed. Mere non-user of the taxing powers by the State does not destroy the power or form any reason for not exercising it," citing 94 U. S., 155.

1. We say the case cited is not analogous in its facts. In the cited case the Legislature had never exercised the power—had never directed its executive officers to see the statute enforced, or passed an act on the subject before the one in question. In the case now before the court the State had exercised the power, by a continuous and an unbroken line of legislative acts, commencing in 1836, repeated in 1844, again in 1869, and also in the act of March 25, 1873. (See brief of Watson, page 6, letters "a" and "c," also on page 7, citing acts of 1848, 1869, and 1873.)

Here, then, we have the acts of the Legislature passed more than fifty years ago, directing the assessing officers of the State, counties and cities, to assess for taxation all shares of stock, and no one of these officers have, from the date of the creation of these stocks in 1848, until the filing of this petition, (July 30th, 1883,) ever placed them upon the assessment lists, as they were sworn to do, if they were liable to taxation.

2. When we recall what have been the pecuniary necessities of the State, and the counties, as well as the cities, during these thirty-seven years, it is marvelous why the assessors have never placed them upon their lists if they were assessable for taxes. It is strange that it never occurred to the State or its officers to institute these proceedings long years ago to test the question of the liability of these shares for taxes. It is true that the current construc-

tion given to the exemption clause in these charters during these past years was, that it exempted from taxation the shares of stock in the hands of the individual shareholders.

3. Of late years very little of the stock is held in the State of Tennessee; formerly a large majority was so held. It is now owned chiefly by non-residents, and has been so held for several years last past; and to assess it, and seek to sell it for taxes under either of the processes enacted by the State, would be monstrous as against these non-residents. (For the modes, see brief of Messrs. Champon & Head, page 11.)

So great was the anxiety of the people of the State of Tennessee—land-locked on every side as she is—to have railroads, that they caused their demands to be entered in the Constitution of 1834, and repeated in the Constitution of 1870, as follows:

"A well regulated system of internal improvements is calculated to develop the resources of the State and promote the happiness and prosperity of her citizens; therefore it ought to be encouraged by the General Assembly."

5. And what has the General Assembly done?

1st. It granted State aid to every railroad company, almost without regard to its merits, at the rate of $10,000 per mile.

6. It empowered its counties, towns, and municipalities to become subscribers for stock in these railroad projects. (See stipulation, page 9, and Code 7 and 8, section 1142, *et sequiter*.)

The city of Nashville took $500,000 of stock in this road. The Georgia R. R. Co. took $250,000. The city of Charleston, South Carolina, took $500,000 of stock, and still holds the same.

8. Surely the State did not mean to tax the stock of her own counties and cities, and most certainly of these non-resident corporation who had so bountifully come to her assistance.

9. Why should not the holders of the stock, if anybody, get the benefit of the exemption? The State had exempted the property of the corporation from all taxation for twenty years. Why not encourage persons to subscribe for stock? These took all the hazards of a total loss.

10. It will not do to say that the assessing and collecting officers of the State, counties, and cities simply overlooked their duties or never had their attention called to these stocks; quite to the contrary. This question has been before the courts certainly sufficiently to have attracted public attention. In the case of Wilson *v.* Gaines, 3 Tenn. Chan., 616, subsequently removed to this court, the learned Chancellor Cooper said: "I have a strong impression the words (capital stock) have been used in these railroad charters in the latter sense, (the aggregate of stock made up of the shares of the stockholders,) *and that the exemption was, as the Attorney-General argued, intended for the benefit of the stockholders by protecting these shares of stock from taxation.*" So here we have the State's highest law officer, and the judge concurring, construing this statute as we now insist it should be. Certainly a purchaser of this stock, after all this, might well believe that he was making an investment in property exempt from taxation. At all events it savors a little of cruelty to tax it back and impair its value.

III.

Our antagonist next assumes the position that whatever may have been exempted by the words "capital stock," the contract of exemption was made with the corporation, and not with the stockholders.

1. To this we reply, in the language of the justice on the circuit, "The contract of the charter is with all who become parties to it by accepting its proposals, as all do who subscribe to the capital stock."

2. We reply: The 4th section of the charter declares: "The subscribers to the stock shall form a body politic and corporate in deed and in law, by the name and for the purpose aforesaid, and in all things be represented by the board of commissioners aforesaid until the election of a board of directors, as hereinafter prescribed."

3. We reply, that by the 34th section, relating to amendments, it is provided that when the charter is adopted and accepted unanimously by the president and directors it "shall be obligatory on the stockholders, and not otherwise."

4. The section under consideration declares the capital stock shall be forever exempt from taxation, and operates upon the capital stock, and does not refer to persons or corporations. When we find the capital stock we find the thing exempted.

IV.

It is contended that the words "capital stock *of said company* shall be forever, &c.," force the conclusion that the thing exempted was something which belonged to the company.

1. We reply: The exemption applies to the capital stock, not as belonging to the corporation as *its* property, but merely as describing it as the capital stock authorized by that act to be issued by that company.

2. The company had been empowered by the charter to sell and pass to subscribers the capital stock, in the pro-

portion of the number of shares subscribed and paid for by each, and after this, in fact, it had no capital stock to be "forever exempt."

V.

Again it is contended that the words "capital stock" are synonymous with the word "capital," and that the effect of the clause of exemption was merely to exempt the "capital" of the corporation.

1. To this the justice on the circuit replied: "But that assumes that the object of the exemption is the corporation, whereas the thing exempted is the 'capital stock' itself, and the natural reading of it is that as to capital employed by the company for corporate purposes in the form of its fixtures, road bed, &c., that shall be exempt for twenty years, and as to the capital stock owned by individual subscribers, who have incurred the risk of the investment and depend on the success of the enterprise for a return of profits, *it* shall be forever exempt."

2. That the words "capital stock" are not used in the charter as synonymous with "capital," we must refer to the charter as its own interpreter. In the 12th section of the charter the following language is used: "The Board of Directors shall not exceed in their contracts the amount of the capital of the corporation, &c."

In section 17 this sentence occurs: "The said company may, at any time, increase its *capital*," not its *capital stock*.

In the legislation permitting the city of Nashville to become a subscriber this language is used: "That the Mayor be and he is hereby authorized to subscribe for twenty thousand shares of *the capital stock* of the Nashville and Chattanooga Railroad Company."

Again, in the third section of the charter as amended, passed January 21, 1848, before the company had been

organized, this language occurs: "That the charter of said company be further so amended that the said company be required to estimate and pay semi-annually to the *several holders thereof* a sum equal to six per cent. per annum on the capital *stock* of said company."

Here the Legislature distinctly called the *shareholders* of the company *the holders of the capital stock of said company.*

By the second section it is declared that the "capital stock" of said company "shall be divided into shares of twenty-five dollars each." Surely after the division a person hunting for the "capital stock" must find it, as Chancellor Cooper suggested, "in the aggregate of these shares in the hands of the shareholders."

VI.

"Capital stock" is often used in various senses, as Chancellor Cooper says (3 Tenn. Chan. Rep., 616); sometimes, as the authorized *capital* actually subscribed; loosely it is used to denote the fund paid in; popularly speaking it is the aggregate of the stock made up of the shares of the stockholders.

It is conceded on all hands that the words "capital stock" have no fixed meaning, but are to be interpreted by the charter, (8 Baxter, 545; 97 U. S., 707.)

This court has frequently held that the exemption of the "capital" of a corporation from taxation carried the exemption to the property into which, under the charter, it was required to be invested. This has been done upon the theory that the capital in such cases had no duration; and while it existed as money, was merely *in transitu* to its permanent investment, in the physical plant, under the requirements of the charter; and respect for the Legislature impelled the conclusion that it intended to give practical and beneficial exemption to something.

In the case of Memphis & Charleston R. R. Co. *v.* Gaines, 97 U. S., 707, this court held that the exemption

of the "capital stock" in these Tennessee railroad charters did not carry the exemption to the property of the company but this would be taxable after the twenty years, and hence the question remains—If the property is not exempt, what does the exemption clause apply to?

VII.

Our opponents next say and argue that the Legislature may tax the *capital* of a corporation and also *its property*, but that the tax on the capital in such cases is not a property tax, but is in the nature of a *privilege tax*—a license for the use of the franchise—and it was this license or privilege tax which the Legislature intended to exempt by the clause in question.

1. We reply to this that the language of the section relates exclusively to *property* tax, exempting the "*capital stock*" forever and the *property* of the company for twenty years.

2. Had the Legislature intended to have exempted the *Company* from a license or privilege tax, it could not have so blundered in giving expression to that fact.

3. A license or privilege tax would have to be paid by the *company*, and an exemption therefrom would have been an exemption in favor of the company or corporation, whereas the exemption is not in favor of a person or a corporation, but is an exemption in favor of the thing—"capital stock."

4. The circumstances surrounding railroad building in Tennessee in 1845 and later years—the large investment made by the State in these enterprises—indicate too clearly that the State never dreamed of making them pay a license or privilege tax, nor has she ever to this day declared that a railroad company should take out a license.

5. A license or privilege tax is always exacted by the State in consideration of a *franchise* conferred by it. (1 Desty on Taxation, 305.) In Tennessee, so far as railroads are concerned, the *franchise* is taxed by the State after the 20 years. The railroad commissioners are required by the act of 1875 to value the *franchise* in connection with the property.

6. If it be said, as is intimated in one of the arguments, (Mr. Watson, page 29,) that the true meaning of this clause is that the State contracted with the company that it would not measure the privilege tax by the amount of its capital stock, either at its real or nominal value, then the clause becomes an illusion. Why might not the State, having contracted not to use that measure, turn around and measure the privilege tax by any other mode, *i. e.*, gross earnings, net earnings, length of roadway, or the number of engines used, or by any other standard selected at discretion, such as the Delaware cases present? (18 Wall., 206.)

VIII.

We insist that when the capital is paid into the treasury of a railroad corporation, which is required to invest the same in a road-bed, physical plant, and equipments, and this is done by the company, there remains no capital as property or money, to be taxed, and no assessor could assess the same as property. It no more exists as taxable property than the $10,000 which a man is taxed upon this year as money, and which next year he invests in real estate. Upon the investment it ceases to exist as money, and takes the form of real estate for all taxable purposes, and does not legally exist for any such purpose. Such an assumption would compel the assessors to continue to assess all the money a man might own at one period of his life long after he had invested it in other taxable property.

This argument has of course no application to banks or

insurance companies which make no investments in a physical, tangible, and taxable property; these are usually taxed upon capital, or capital is made the measure.

So we say that the exemption of the capital of a railroad corporation must per force exempt the property in which the capital is invested, and as the property in this case was exempted for twenty years, that fact exempted the capital, thus leaving "capital stock" to mean the aggregate of the shares or mean nothing.

IX.

Can non-residents of the State be taxed upon shares of stock held by them, upon corporations chartered by the laws of Tennessee in the State of Tennessee?

It is settled by the court in the case of the Foreign Bondholders, 15 Wall., 300; and Murray *v.* City of Charleston, 96 U. S., p. 448; and R. R. Co. *v.* Jackson, 7 Wall., 262, that the power of a State to assess for taxation is limited to persons within her jurisdiction if it is a personal tax, or to property the legal *situs* of which is within her jurisdiction, or to a business within her jurisdiction.

Two of these cases arose under laws seeking to tax foreign held bonds, secured by mortgage upon the property of the corporation, chartered by the State ordering the assessment, and held adversely to the right to assess them, or that the assessments were void for the want of jurisdiction. The other case was some character of "*stock*" issued by the city of Charleston.

1. It only concerns us to notice the *situs* of the property. Where is the *situs* of stocks?

Personal property follows the person of the owner. Such is the universal rule of the common law, the civil law, and the law of nations.

But our adversaries say the Legislature of the State can

fix a *situs* of all property for the purposes of taxation. This will not be denied as respects the State and its citizens, or as respects property within its jurisdiction; but it is denied when sought to be applied otherwise. A person cannot be in two States at the same time, nor can property be in a State where the tax is laid, and at the same time be in another State.

Stock is in the nature of a chose in action; it is intangible, incapable of manucaption, and is merely a right in action.

There is a limit to State legislation which seeks to give a situs to a chose in action, *constructively*, for the purposes of taxation.

This court has held that she could not by legislation *constructively* locate a *debt* due from one of its citizens to a non-resident creditor for the purposes of taxing it; held likewise as to bonds secured by a mortgage.

Judge Strong uttered the sentiment of the judicial mind when he said "the truth is, it is impossible to disregard domicil when the enquiry is the situs of rights in action, or to personalty generally, and where is legislative jurisdiction over them."

In the case of Kintzing *v.* Hutchinson, reported in 7 Weekly Notes of Cases, 226, there is an elaborate opinion of Mr. Justice Strong, arising upon the Pennsylvania statute levying a tax upon the inheritance of decedent's estate. The party had died in New Jersey owning bonds on the State of Pennsylvania, stocks in corporation chartered by and located in Pennsylvania, as well as various choses and securities due him from citizens of Pennsylvania, in which he held: "A person domiciled in another State, though he owns loans of the commonwealth of Pennsylvania, or *stocks of its corporations*, or claims against its citizens, has no estate by virtue thereof within the commonwealth. His estate or ownerhip is where he resides, and

is *taxable* there because he resides there. Neither he nor his estate is within the jurisdiction of Pennsylvania."

In the case of Union Bank *v.* State, 9 Yerger, 500, the Supreme Court of Tennessee say: "The *power* to tax non-resident stockholders is denied, and, we think, correctly; from its very nature it must be a tax *in personam* and not *in rem*." The 5 Cold., 604, and 7 Hess., 407, cases, neither conflict, because both were citizens of the State, and the stock sought to be taxed was shares in a National Bank in Nashville. See also Central Law Journal, vol. 22, p. 7.

It is stipulated that the road lay in the States of Tennessee, Kentucky, Alabama, and Georgia. Why may not each State locate the stock of the company within itself and thus assess it four times?

The State cannot, in the face of the thirtieth section of the charter, compel the railroad company to deduct from the dividends of a stockholder sufficient to pay his taxes on the stock. 15 Wall., 30; 96 U. S., 448.

EDWARD H. EAST,
Att'y for Defendant.

117-129+135

Supreme Court of the United States.

October Term 1885.—No. 935.

TENNESSEE

vs.

WHITWORTH.

Argument of J. B. HEISKELL *for Plaintiff.*

There are two burdens in this case. The one is upon the corporation to make clear, beyond dispute, their claim to exemption.

The other, upon the petitioners to show some operative action of the exemption without extending it by implication to protect shareholders.

Now, while I am not prepared to assert that they cannot make their title clear by showing that it is impossible to give any effect whatever to those exemptions without construing it to exempt shareholders, I do most confidently assert that they must show this impossibility to the entire satisfaction of the court; that if they leave it in doubt, they have failed. While we by the same token may sufficiently support the onus which we bear by making it even doubtful, yet while this will satisfy the requirement of the law, we cheerfully undertake to go beyond that and make certain that the exemption has scope and verge enough without any such construction.

Do I state the onus upon the defendants too strongly

here? In Farrington *v.* Tennessee, (95 U. S., 679,) Swayne, J., for the court, says: "When exemption is claimed it must be shown *indubitably* to exist." * * * "A well founded doubt is fatal to the claim. It is only when the terms of the concession are too explicit to admit fairly of any other construction that the proposition can be supported." (Citing 93 U. S., 595; 89 U. S., 805.)

But these are merely selected cases out of a mass which state the same principle.

Exemption not Nugatory.

It is said that upon the contention of the relators the provision in these charters would be nugatory. If so this would be an objection of the highest consequence. But is this indeed so?

It is as well established as any point in the law of Tennessee, that there are, besides the property of a shareholder in his stock, three subjects of taxation in every corporation: the capital, the property, and the franchise. (State Union Bank, 9 Yerg., 490.)

And this is fully sustained by authority in other States, and most notably in this court.

This is most usually stated in the form that there are four taxable elements in corporations, but this includes in the enumeration the tax upon the shares which is not a tax on the corporation, the artificial entity, but upon the individual person owning the shares.

The more accurate statement is therefore that which I have given, which discriminates clearly between the tax upon the property of the person and the tax upon the legal entity. See 1 Desty on Taxation, 348.

Now it does not appear, by any authority that I am aware of, that there is anything violative of the Constitution of the United States, or of the State of Tennessee, in placing a tax upon each of these three elements of taxability at the same time; and most certainly, if this be true, a provis-

ion which exempts a corporation from either of these triple forms would be a most substantial protection.

It has indeed been questioned in Tennessee, in L. & N. R. R. Co. *v.* State, 8 Hei., 795, whether under the present constitution the legislature can exempt either of these, or is not bound to tax them all. Of course I don't mean to cite the present constitution as to the power to exempt under a prior constitution, but merely as affecting the question of what taxation was allowable independent of constitutional restriction or exemption.

And this is fortified by the decision in 7 Lea, 561–76, where the court held that a deduction of the valuation of the shares of stock from the value of railroad property in assessing the roads is not allowable. Chattanooga *v.* R. R. Co.

It is certain that in Tennessee it would be perfectly legitimate and constitutional to tax the property ad valorem, and the franchise in proportion to the statutory capital. That was indeed the fixed mode of taxing merchants upon their capital and upon their privileges under the constitution of 1834, under which these charters were granted. Corporations were certainly liable to be taxed in these two modes at the same time.

A prohibition of one of these modes would be no despicable measure of relief.

If a tax on all three of these elements was allowable the result would be the same.

But in the case above cited of Farrington *v.* State, 95 U. S., the court have held that to tax the capital of a corporation and the stock of a shareholder is not double taxation. This is fully to maintain the principle with which I set out, that the capital of the corporation and the property of the shareholder are separate and distinct properties. If a tax upon one was a tax upon the other, then a tax upon both would of course be two taxes upon the same thing—which would be double taxation.

If, then, these are separate and distinct properties, both subject to taxation at the same time, how can it be said that an exemption of one is not a substantial thing, and that it therefore must be held that to exempt one must by construction exempt both? Let the State tax both and which would the exemption operate upon?

Either of these positions is sufficient to maintain our view.

But to go further: suppose the power to tax embraced merely the option to select one of these modes of taxation, would not a stipulation to be forever protected from the right of option as to one of the three be an operative enactment?

As has been declared by this court in the State *v.* Farrington, 95 U. S., the taxation of the capital of a bank is upon an arbitrary fixed sum not capable of reduction by a corporation in view of any loss or mishap whatever, and so in its nature less just than a tax upon the value which, varying with circumstances, could be variously measured. An exemption in perpetuity from this arbitrary kind of tax, with an express reservation of power to lay the tax on the other more just and equitable basis, after a temporary exemption had expired, seems to need no extension to give it scope and operation.

It does not affect this construction if subsequent development of the business had made or shown the tax on property more beneficial to the State, and that the roads, supposing they had their choice, took what turns out to be the least beneficial mode. If there was then an apparent reason for the exemption, it is accounted for without making it extend to a different property of a different person. But it does by no means appear that in agreeing upon the basis of inducement the main inducement was not the twenty years' exemption, and the other then, on the option hypothesis, would sufficiently answer our pur-

pose, on the theory that the State from that time took the option most beneficial to herself.

In any possible view that can be taken of the statute, the result is that the exemption taken as a whole offers inducements of value to investors, and gives a reason for the stipulation and every part of it without resorting to the hypothesis that the compact means more than meets the eye.

This Farrington case seems to be much misunderstood. If I understand the position of the court in that case, it is this: That admitting and, indeed, asserting and holding, as it did, that a tax upon the capital and upon the shares were upon two distinct properties of two distinct entities, yet as the tax authorized to be collected by the charter was a tax on the shares, and as this was to be in lieu of all other taxes, it must needs be in lieu of all taxes upon the same shares and the same thing. But the tax which was relieved against there was a tax upon those very shares—upon the same thing on which was levied what was to be the only tax. These are not the words of the court, but a paraphrase which any fair mind must accept as setting forth the views of the court. This Farrington case is not then at all incompatible with our contention, but, on the contrary, in the clear statement of the proposition that the thing exempted in these charters, capital, is a different thing from what the State has chosen to tax, has given to our argument material support; in fact made it impregnable.

Take the opinion in that case. The first proposition on the special facts of the case is—

"1st. The tax specified is upon each *share* of the capital stock, and not upon the capital stock itself;" *i. e.* upon the share of the shareholder and not on the capital.

"The capital stock and the shares of the capital are distinct things."

"It (the State) chose to stipulate for a specified tax on the *shares*, and declared and bound itself that this tax should be in lieu of all other taxes."

"There is no question before us as to the tax imposed on the shares by the charter. But the State has by her revenue law imposed another and additional tax on these *same shares*. This is one of the *other* taxes which it had stipulated to forego. The identity of the thing doubly taxed is not affected by the fact that in one case the tax is to be paid vicariously by the bank and in the other by the owner of the share himself. The thing thus taxed is still the same, and the second tax is expressly forbidden by the contract of the parties."

Now what is this but to hold that one tax upon the shareholder in lieu must be in lieu of all taxes upon him for the same shares? The conclusion is inevitable. A tax upon the owner in lieu of all other taxes must be in lieu of all other taxes on the same owner. If the tax laid by the charter had been on the capital of the bank, the result must inevitably have been different.*

Then the tax upon the *corporation* would have indicated no intent to protect the stockholder, and so the construction would have been confined to the party on whose property the tax was laid, and would have been in lieu of all other taxes upon that person—*i. e.*, the corporation. It was the whole drift of the argument of the court to show that it was not this state of things which the exemption contemplated.

Capital and Stock.

Much of the difficulty on this subject arises from the persistent use of the word stock in connection with capital. When we speak of a partnership we have no difficulty in understanding the word *capital*—the cash or other basis of operations. When we speak of a corporation, if we would say capital there would be no confusion. Capital of a railroad and capital of a firm are exactly similar entities,

*Indeed where that was the case a different result was reached in The Union Bank r. State, 9 Yer., 490, and that case in the Farrington case, is commended as "marked by eminent judicial ability and careful thought."

and ought to be represented by the same word; but because the one is not represented by certificated shares we designate it simply as capital invested, as we do the capital of an individual, while the other, because it is derived from stock subscriptions and represented by stock certificates, we designate as stocked capital or capital stock. In its aspect as to taxation it is simply capital, like the capital of a merchant or a firm, unless it is meant to restrict it to capital of a certain description. But stocked capital and actual capital may differ, and so the word stock in this connection may have a meaning, and an important meaning, restrictive of the exemption. We have a bank at Memphis with a stock of only $250,000, yet the capital used in its business is more than $1,000,000. An exemption of the capital of that bank would be operative on four times the amount that would be covered by an exemption of its capital stock. So capital stock is restrictive upon the exemption, and is not mere verbiage.

Now this restrictive exemption of capital stock, $250,000, cannot by construction be amplified to cover that $1,000,000, the existence of which gives to the shares a measure of value far beyond the capital stock.

Take another instance, the Western Union Telegraph Company. Suppose its capital stock to have remained unwatered at the cost of its properties, and suppose that to have been ten millions, and that it divides in earnings two-and-a-half millions per annum, twenty-five per cent., and so estimating it on the basis of six per cent. profit, as representing a stock at par, it would be worth more than four hundred per cent. Now exempt that capital stock and let the question be, does that exemption of ten millions exempt the property of the stockholders worth $40,000,000 (forty millions.) This would be a monstrous result, not to be tolerated if the onus to restrict exemptions and to disprove them was on the State, and impossible with every presumption against the stockholders.

But why go beyond the facts actually existing in regard to Tennessee railroads?

The E. T. Va. & Ga. R. R. Co. has $44,000,000 of capital stock, which would, but for the exemption, be taxable on its nominal value.

Its stock is worth, common, not more than 6 or 7 cents; its preferred, 12. Say the average is 10, and we have exemption on $36,000,000.

The Nashville & Chattanooga & St. Louis R. R. has a capital stock of..... $6,670,000

Its shares are worth at this time about 45 cents, giving effect to an exemption of 55 per cent. of the capital stock, making the stock worth $3,001,500.

The Nashville & Decatur R. R. has a capital stock of..... $1,356,000

Its shares are worth not more than 95 cents on the dollar, or $1,228,200.

History of the Legislation.

These are the general views which affect the construction of these charters. But there are other matters which have a special and controlling effect in the history of this legislation as connected with judicial decision and other legislation *in pari materia*.

The first important fact is that the principles on which we now claim to distinguish the capital of a corporation from the stock of its shareholders had been announced about the time that the exemption of railroads from taxation had its inception. The case of the Union Bank *v.* The State, 9 Yer., was decided at the December term, 1836.

At the session of 1837–'8 of the Legislature an act to incorporate the Lookout Railroad Company, (c. 17, s. 19, p. 48,) contains this provision:

"The capital stock of said company shall be forever exempt from taxation, and all their other property of every

other description, situated within this State, including the road and rails, shall be exempt from taxation for and during the period of twenty years from the completion of said road and no longer."

At the same session of 1837, S. A., p. 16, the Legislature granted to the Louisville, Cincinnati & Charleston Railroad banking privileges, and the exemption granted is a remarkable evidence that the case in 9 Yer. was present to the minds of the Legislature.

The exemption is as follows: "Sec 25. The capital of the said bank and all the funds thereof, the shares of the *stockholders* therein and the dividends thereon, shall be free and exempt from taxation of every kind in each of the States granting the charter until said railroad shall be finished, and the stockholders shall have divided an interest of six per centum per annum for each year upon their investment, after which the State of Tennessee shall have a right to lay a tax equal to the tax laid on the *capital stock* of other banking institutions in the said State, upon so much of the CAPITAL of the bank as is employed by the branch in the aforesaid State; provided, that the real estate of the said bank and its goods pledged for money lent, and its goods the produce of its lands, may be taxed at the same rate as similar real estate and goods are taxed in the State where the same may be situated." Act of 1837, c. 6, s. 25.

Here is a model for the doing of the thing which these defendants say was done here. But how widely does it differ from the exemption of the Lookout Company granted at the same session. Can the courts of a country be justified in holding that two exemptions so different in terms cotemporaneously adopted by the same body are intended to confer the same measure of exemption?

This exemption of the Lookout Company is identical in all its essentials with the exemption under consideration.

At the session of 1845–6, by chaps. 1 and 182, the N.

& C. and the M. & C. R. R. are chartered, and by section 38 identical in each in number and language. "The capital stock of said company shall be forever exempt from taxation, and the road with its fixtures and appurtenances, including workshops, warehouses, and vehicles of transportation, shall be exempt from taxation for the period of twenty years from the completion of the road and no longer." (P'p. 27 and 275.)

With the model of a perfect exemption; with the model of a restrictive exemption; with the decision of the court in 9 Yerger, the legislature adopted the restricted form of exemption in the charters now under consideration.

It necessarily results that such a discrimination in the grants discovers an intent to give to one a different exemption from the other.

But the continuing practice of the Legislature is consistent with this view. In the act of 1869 the Legislature exempts the capital of all corporations, and imposes a tax on the shares of the shareholders, thus keeping its faith with these exempted corporations, and preserving the equality which the constitution requires by taxing the shares of the stockholders and the property only of the corporations.

Practical Construction.

An attempt, apparently serious, is made to base an argument on the argument of the Attorney-General of Tennessee before the chancellor in the case of the M. & C. R. R. *v.* The State, 3 Cooper Ch. 516.

Now, this allusion to the view of the Attorney-General is found, after a decision of the cause, on other grounds subsequently approved in this court, and the discussion in which that allusion is found is introduced by the words: "In this view it becomes unnecessary to determine what was meant by the exemption of the capital stock." It was not in fact involved in the decision made further than

that in any possible view of it it could not exempt what the State expressly reserved the right to tax. What follows this declaration that it was not necessary to decide at all what was meant by this phrase, comes exactly under the definition of an *obiter dictum*. So the authority of the case as a judicial decision is nothing, because it is outside of the matter to be decided, not even matter of judicial opinion.

If thus in a matter in which it might have been judicial decision and authority, so far as the person from whom it comes is concerned, it fails of the dignity of decision and is classed as *dictum*, how much more must it fail of authority when it is only the first hasty impression of the State officer, called as he often was to dispose of such causes, even of the highest consequence, without time for preparation, and whose arguments are not invested with the authority of judicial determination in any case?

The fact is further to be noted that there is no trace of such an idea in the more matured argument of that officer before the Supreme Court of Tennessee, and in the brief of the same officer in this court it will be seen that he has not thought this question sufficiently pertinent to the matter in hand to give it even a passing mention.

The argument on which so much reliance is had here, based on a supposed practical construction, is not of great weight under the circumstances. While construction by action may be of great cogency, mere negative evidence of construction, mere failure to exercise a right, is of a very different heftiness. It is like the difference between positive and negative evidence.

Until the constitution of 1870 there was no constitutional requirement to tax stockholders except in banks, and so the legislature were not bound to tax any other stocks. If they failed to enact such a tax they were merely applying their discretionary powers.

But it is said that they passed tax laws which would include railroads, and yet they were not taxed.

Such omissions by tax assessors are entitled to scarcely any weight. On the 5th of January, 1880, there was terminated in this court a litigation of the State with the Mississippi and Tennessee Railroad Company, holding that that company were never entitled to any exemption at all on their property. Yet in a recent litigation to recover the unassessed taxes for years back, it was disclosed that that company still claimed exemption, and that they had never paid taxes before that litigation, nor had they been assessed for or paid one dollar of the like tax for nine years from the beginning of that litigation until the appointment of the railroad tax assessors. This shows how little a *presumption* of construction has to stand upon.

Practical construction is matter of proof. It cannot in general be presumed from mere neglect of subordinate officers. The maxim, *nullum tempus occurrit regi*, was based upon the difficulty of securing promptitude in the action of officials, and the liability of government to irreparable loss of it was to be held bound by such omissions.

In the case of the Tenn. Coal I. & R. R. Co. the facts are, that without any exemption it escapes assessment and taxation in exactly the same way and to the same extent that the roads with an exemption did; and the Mississippi and Tennessee, with a mere pretense of exemption, was in the same condition; so that the practical construction amounts to this, that the roads without this exemption, equally with the roads which had it, were untaxed. Proving so much, it proves nothing.

The fact is, the system of assessing property for taxation in Tennessee is such that, except in those instances where corporations are required to disclose and pay the taxes, as in the case of banks and insurance companies, there is no mode provided by which the shareholders can be discovered and taxed, and even in these records it is set up that

the trustee cannot assess "*from any information within his reach, or of which by law he can avail himself.*" (Rec., p. 8, fol. 21.) Even in the case of banks, if there was a refusal to disclose, the assessor would have to resort to a regular legal proceeding to obtain the information.

Non-Residents Taxable.

On the question of the right to tax the stock of non-residents, the Supreme Court of the United States have distinctly affirmed that it is subject to regulation by the charter, and that if it is given a locality by the charter it may be taxed where the local situs is fixed.

But the State courts have held that local situs may be changed by general laws, after charter rights are acquired. (5 Cold., 600; 7 Heis., 408; Id., 409.)

It cannot be said that the situs of the stock of the stockholder is a contract right within the Constitution of the United States.

The decisions of the Supreme Court of the United States intimate no such doctrine.

There can be no question that as to stock which, by the common law and the residence of the owner, was within the jurisdiction, the right to control its situs could only be prevented by the contract impairment clause.

As to stock locally absent from the State when the tax law was passed, a very ingenious point would be that, being absent from the State, the rule as to jurisdiction of property not within the limits of the State would apply, and the State has no jurisdiction. But this is not sound. The State has jurisdiction of the corporation, of its dividends, of the property out of which the stock issues. It can amend the charter, require registration of all transfers of

stock to protect creditors, regulate the corporation in all things not protected by contract, and of necessity the stockholders as voters and controllers of the corporation. The stock is thus within the legislative jurisdiction.

If it is not, all stock owned in the State when the law passed was clearly within the power of the legislature, and its subsequent transfer would carry it *cum onere*.

Congress has exercised the power to amend the charters of the national banks so as to allow their stock to be taxed where the bank is located. Now this contains within it the very question here. If the stock is by the fact of its locality beyond the reach of the State, then the permission to tax could not enable the State to reach non-resident stockholders. The only hold the State has—the only vinculum—by which it connects with these, is the local *situs* of the bank and its dividends; that is enough in the view of the courts, which have not questioned the full power of the State to enact laws to reach the foreign stockholder.

The State does not derive any new right to tax from the law of Congress—it only removes the prohibition against taxing the agencies of the Federal Government. 7 Heis., 402.

If the State has not this power to regulate the local *situs* of stock, when the stock is once removed, then by the same reason it has lost all power to control it in any way. Its own creature has escaped its control like the creation of Faust.

In Tappan *v.* Merchants' National Bank, 19 Wall., 503, the right to fix a *situs* in the charter of national banks, and its being fixed, is held to give control to the State to tax non-residents.

"That which belongs to non-residents is there by operation of law. That which belongs to residents is there by reason of their residence. All the owners have submitted

themselves to the jurisdiction of the State, and they obey its will when kept within the limits of constitutional power."

The stockholders who accept the charter of the State submit to its jurisdiction to regulate them in their relation to the corporation, its citizen, and so to control the situs of stock.

The case of State tax on foreign-held bonds is nearest to this question of any decided. 15 Wall., 319. There the fact that the corporation which issued bonds was a resident of the State, was held not to give to the State jurisdiction of the bonds held by non-residents. There, however, the corporation made its contracts as any other citizen, and the right of the State to control the debts was denied, as it would have been as to bonds issued by private persons.

But there seems to be an element in the matter which is overlooked and which ought to have controlled the question there.

Long before the contracting of this debt the State of Pennsylvania had made all debts due from its citizens to foreign holders taxable. All debts contracted within the State therefore were subject to this rule as part of the contract. Debts contracted by Pennsylvanians in another State would not, of course, be subject to this rule, being governed by the *lex loci contractu*. But the corporations of the State owing existence to the State are more abjectly subject than the free citizen. Wherever they go they are subject to the law of the State, and the *lex loci contractu* cannot release them from the control of the State. All persons dealing with them probably deal with them as citizens and subject to the laws of the State.

But however this may be of those contracts which are the right of all persons and which usually are governed by the *lex loci*, the contracts of shareholders which are directly relative to the corporation, the creature of the State, and

subject to its control as part of the fundamental law of the corporation, stand upon a different basis.

The courts say the legality of a tax on the bonds would not be questioned if it was made part of the charter. But the general law gave it the effect of being part of the charter.

The dissenting opinion takes this view: That the act of 1844 gave effect to the rule that the *situs* of the debt for taxation was in Pennsylvania.

But Mr. Justice Field himself, in 18 Wall., 229, makes apparent the distinction when he says that the stock of the shareholder accompanies the person of the owner. "But whether when thus regarded it can be treated as so far severable from the property to which it relates as to be taxable independent of the latter, is a question not necessary now to be decided."

This seems to be in affirmance of the doctrine in 14 Grattan, 385, Richmond *v.* Daniel, where it was held that a resident owner of stock in a corporation situated beyond the city was not taxable there on his stock; in other words, that it was not taxable independent of the locality of the property to which it relates.

46 N. H., 398, is to the same effect.

12 Allen, 322, is to the reverse.

21 Vt., 152.

46 N. H., 398, to same effect.

12 Allen, 322. Shares of the capital stock of a foreign manufacturing company, if owned by citizens of the Commonwealth, are taxable here for the full value, without deducting the value of the machinery and real estate belonging to such corporation, and taxes it at the place where it is established.

23 N. Y., 224. Capital invested in New Orleans cannot be taxed in New York, where owner lives.

35 N. Y., 423. Stockholders of National or State banks whose capital is invested in U. S. bonds, may be assessed and taxed under the authority of the State laws at the place where said bank is located, and not elsewhere.

19 Ill., 160. Where a city charter confers power to levy and collect taxes upon all property within its limits, property of a resident having its actual situs without the limits of the city is not taxable. Place or situs of vessel is the place of its registration.

21 Vt., 151. H, who resides in New York, owning debts due from solvent parties in Vermont, controlled and managed by the plaintiff as agent; held that Legislature could properly tax, and that the words *held in trust* in that act covered such property, and that it was properly assessed at residence of plaintiff.

The case of St. Louis *v.* The Ferry Co., 11 Wall., 428, is not this case. It is a case of a foreign (Illinois) corporation, with boats merely touching at St. Louis. In holding that its property was not taxable in St. Louis the court say: "In the jurisprudence of the United States a corporation is regarded as in effect a citizen of the State which created it. It has no faculty to emigrate." The tax was upon the property, and it was held to be property not locally situate in St. Louis. The State had, therefore, no jurisdiction of the person of the owner—the corporation; nor had it any of the property which was not situate there, but properly in Illinois, the residence of its owner. There was no effort by the State to regulate *situs;* no relation to the corporation to give any control.

The act of 1869, chap. 45, sec. 9, page 68, makes all stock in corporations taxable on the value of their shares, and fixes the situs of the property at the point where the corporation "is located."

1875, chap. 78, page 100, provides for assessing the distributable value of railroad property by State assessors.

Assessment by tax collectors. 1879, chap. 77, page 93. Amended 1881, chap. 181, page 225.

On the question of the right to tax stockholders in a road which runs through two States, the case of the Railroad Co. *v.* Jackson, 7 Wall., . is overruled by the Supreme Court in State tax on foreign-held bonds, 15 Wall., 318–19, where the comments of Field, J., are conclusive against this point.

J. B. Heiskell

JUDGMENT.

For judgment of Chancellor at hearing see 9 Ontario Reports, p. 251.

JUDGMENT OF THE HONOURABLE THE CHANCELLOR.

This action coming on for trial on the first and second days of June instant, at the Special Sittings of this Court for the Trial of Actions in the Chancery Division, in the presence of Counsel for the Plaintiffs and Defendants, upon opening of the matter, upon hearing read the pleadings and proceedings herein, and upon hearing the evidence adduced and what was alleged by Counsel aforesaid, this Court was pleased to direct that this action should stand over for judgment, and the same coming on this present day for judgment:

1. This Court doth declare that the Plaintiffs are entitled to facilities for carrying on express business upon, on and along the lines of Railway now being operated by the Defendant Railway Company and known as the Toronto, Grey and Bruce Railway and the Teeswater Branch, equal to the express facilities exercised thereon by the Defendant Express Company and upon equal terms and conditions in every respect, and doth order and adjudge the same accordingly.

2. And this Court doth further declare that the privilege of employing the station agents of the Defendant Railway Company along the said lines of Railway as agents of the Defendant Express Company is an "Express Facility" within the meaning of Sub-Section 3 of Section 60 of "The Consolidated Railway Act, 1879," and that the Plaintiffs are entitled to such privilege, together with the other advantages necessarily incidental thereto in the ordinary course of business, so long and to the same extent as the said agents are permitted to act as agents for the Defendant Express Company on and along the said lines of Railway; and doth order and adjudge that the Defendant Railway Company, their servants, workmen and agents, hereafter be, and they are hereby restrained from interfering with or otherwise preventing or attempting, either directly or indirectly, to prevent such of their station agents along the said lines of Railway as are now acting or as may hereafter act as agents for the Defendant Express Company from acting as agents for the Plaintiffs and from performing as such agents services similar to those performed by them respectively for the Defendant Express Company.

3. And this Court doth further order and adjudge that the Defendant Railway Company do grant to the Plaintiffs facilities for doing an express business upon the said lines of Railway equal to the facilities granted to the Defendant Express Company and upon equal terms and conditions.

4. And this Court doth further order and adjudge that it be referred to the Master in Ordinary of the Supreme Court of Judicature for Ontario, to enquire and state what damages the

Plaintiffs have sustained by reason of the refusal of the Defendant Railway Company to grant express facilities to the Plaintiffs to which they are hereinbefore declared to be entitled, and by reason of the discrimination of the Defendant Railway Company in favour of the Defendant Express Company and against the Plaintiffs, provided that no sum shall be awarded for damages sustained subsequent to the granting of the injunction herein unless it shall appear that the Defendant Railway Company disobeyed the same.

5. And this Court doth further order and adjudge that the Defendant Railway Company do pay the amount of such damages to the Plaintiffs forthwith, after the confirmation of the said Master's Report.

6. And this Court doth further order and adjudge that the Plaintiffs and the Defendant Railway Company do execute an agreement which shall secure to the Plaintiffs equal facilities for their express business to those enjoyed by the Defendant Express Company and upon equal terms and conditions, such agreement to be settled by the said Master in case the parties differ about the same.

7. And this Court doth further order and adjudge that the Defendant Railway Company do pay to the Defendant Express Company their costs of this action forthwith after taxation thereof.

8. And this Court doth further order and adjudge that the Defendant Railway Company do pay to the Plaintiffs their costs of this action forthwith after taxation thereof, so far as it relates to the relief hereinbefore granted, and that as to all other relief claimed by the Plaintiffs, this action do stand dismissed with costs to be paid by the Plaintiffs to the Defendant Railway Company forthwith after taxation thereof.

Judgment entered the 11th day of June, A.D. 1885.

(Sd.) GEORGE S. HOLMESTED, *Registrar.*

J. B. 7, P. 8.

MAP OF THE
SOUTH WEST
Railway System.

MISSOURI PACIFIC RY.
CENTRAL BRANCH U.P.R.R.
MISSOURI, KANSAS & TEXAS RY.
TEXAS & PACIFIC RY.
ST. LOUIS, IRON MOUNTAIN & SOUTHERN RY.
INTERNATIONAL & GREAT NORTHERN RY.
AND THEIR CONNECTIONS.

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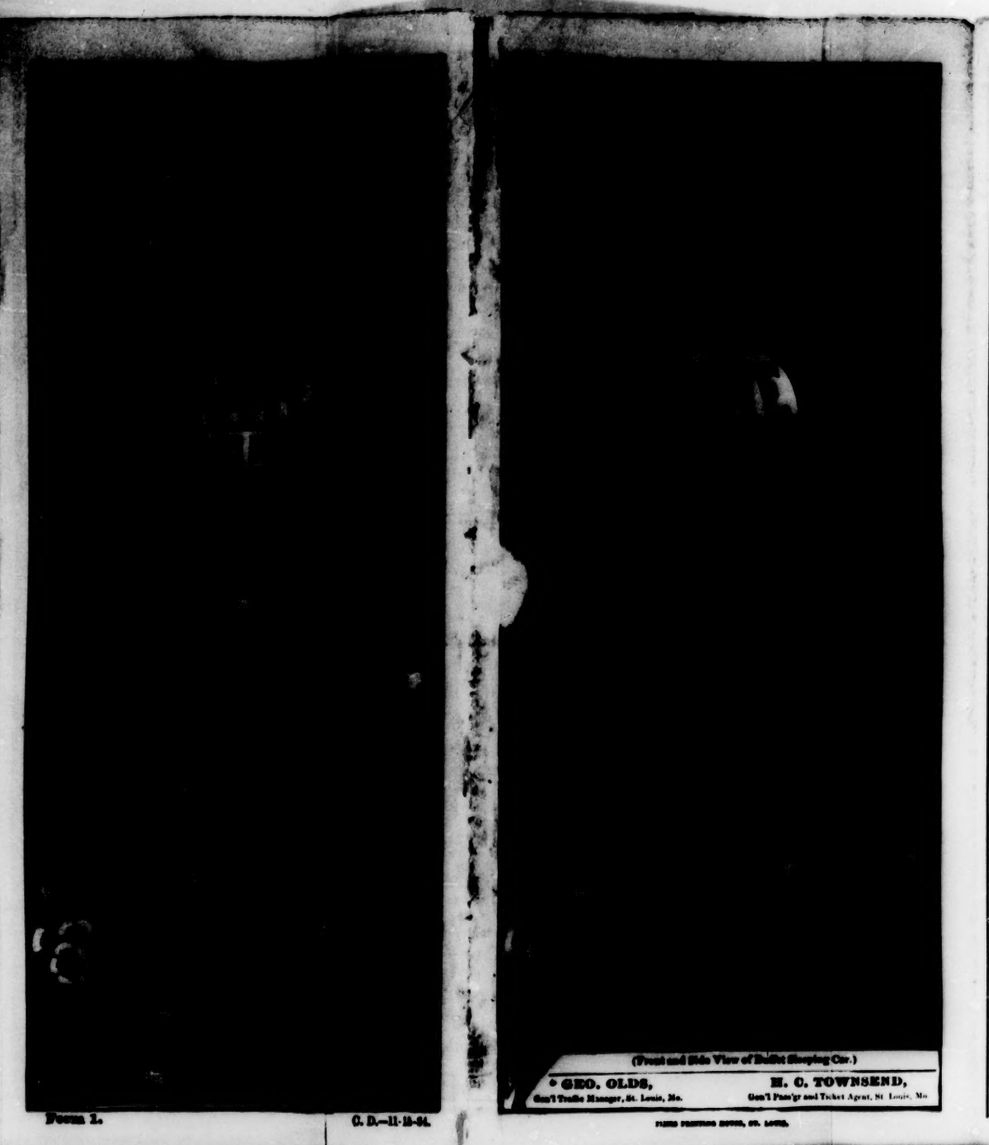
10 Round Trip	$165 00	$175 00	$165 00
15 " "	160 00	170 00	160 00
20 " "	155 00	165 00	155 00
25 " "	150 00	160 00	150 00
30 " "	145 00	150 00	145 00
35 " "	140 00	150 00	140 00
40 " "	130 00	140 00	130 00
45 " "	120 00	130 00	120 00
50 " "	100 00	120 00	110 00
		110 00	100 00

☞For parties going by one of the Pacific Coast terminal lines in this association (which it is understood includes the Northern Pacific north and east of Garrison) and returning by another, $25.00 additional to the rates given above will be charged on each ticket, except that for parties of ten or fifty-five or more, all of whom, in addition to their fares, pay in advance for all sleeping car and hotel expenses of trip, no additional charge will be made for return by an opposite route. If any member of a party, so named in above exception, desires to return by any other line than that for which his ticket is issued, an exchange can be made on payment of $25.00 additional.

When going by Northern Pacific and returning by Central or Southern Pacific, or vice versa, the regular Ocean Rate between San Francisco and Portland shall also be added.

3 + 4



Form 2. C. D.—11-12-84.

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IRON MOUNTAIN ROUTE.

CONDENSED TIME TABLES.

St. Louis, Little Rock, Hot Springs and Texarkana Line.

Miles.	STATIONS.	EXPRESS. No. 601. Daily.	EXPRESS. No. 603. Daily.
0	Lv. St. Louis U. Depot	9.10 a. m.	8.30 p. m.
6	" Carondelet, (Robert ave.)	11.10 "	10.24 "
43	" DeSoto	11.57 "	"
61	" Mineral Point	12.17 "	"
78	Ar. Bismarck	12.36 p. m.	11.42 "
81	" Iron Mountain	1.05 "	12.06 a. m.
88	" Middlebrook	1.09 "	12.16 "
95	" Ironton	1.12 "	12.19 "
99	Ar. Arcadia	Lv 1.18 "	12.23 "
99	Lv. Arcadia	1.38 "	12.23 "
108	" Anapolis	2.23 "	1.12 "
116	" Des Arc	2.40 "	1.37 "
127	" Piedmont	3.15 "	2.20 "
134	" Mill Spring	3.73 "	2.41 "
145	" Williamsville	5.38 "	3.08 "
150	Ar. Poplar Bluff	4.45 "	4.00 "
166	Lv. Poplar Bluff	4.50 "	4.10 "
173	" Harviell	5.05 "	4.30 "
180	" Neelyville	5.20 "	4.50 "
186	" Moark	5.31 "	5.00 "
192	" Corning	5.43 "	5.19 "
198	Ar. Knobel	5.57 p. m.	5.35 a. m.
198	Lv. Knobel		6.20 a. m.
211	Ar. Gainesville		6.57 "
220	" Nettleton		8.17 "
236	" Harrisburg		9.30 "
274	" Vandale		10.00 "
286	" Forest City		11.02 "
302	" Hicks		11.26 "
313	" Marianna		12.15 p. m.
321	" LaGrange		12.45 "
338	Ar. Helena		2.00 p. m.
198	Lv. Knobel	5.57 p. m.	5.35 a. m.
203	" Peach Orchard	6.06 "	5.47 "
214	" O'Kean	6.30 "	6.15 "
225	Ar. Walnut Ridge	8 6.55 "	6.40 "
225	Lv. Walnut Ridge	7.15 "	7.00 "
242	" Minturn	7.38 "	7.17 "
262	" Newport	8.00 "	8.22 "
283	" Russell	8.48 "	9.10 "
288	" Bald Knob	8.59 "	9.20 "
292	" Judsonia	10.08 "	9.30 "
296	" Kensett	10.16 "	9.40 "
312	" Beebe	10.55 "	10.25 "
323	" Cabot	11.18 "	10.47 "
343	" Crossing[L. R. & Ft. S. R'y]	11.50 a. m.	11.25 "
344	" Baring Cross	12.20 "	11.45 "
345	Ar. Little Rock	12.30 "	9[11.55 "
345	Lv. Little Rock	12.45 "	12.15 p. m.
358	" Alexander	1.20 "	12.48 "
362	" Benton	1.41 "	1.14 "
398	Ar. Malvern	2.53 a. m.	2.03 p. m.
413	Ar. Hot Springs via H. S. R. R.	4.30 a. m.	3.55 p. m.
410	Lv. Arkadelphia	3.30 a. m.	3.00 p. m.
426	" Gurdon	4.08 a. m.	3.40 p. m.
460	Ar. Camden (Branch)		7.10 p. m.
457	Ar. Boughton	4.37 a. m.	4.10 p. m.
442	" Prescott	5.18 "	4.52 "
449	" Emmet	5.07 "	4.42 "
457	" Hope	5.38 "	5.04 "
470	" Fulton	6.01 "	5.38 "
490	Ar. Texarkana	6.50 a. m.	6.30 p. m.

(B) Breakfast. (D) Dinner. (S) Supper.

IRON MOUNTAIN ROUTE.

CONDENSED TIME TABLES.

St. Louis to Austin, San Antonio, Laredo, and Intermediate Points.

Miles.	STATIONS.	EXPRESS. No. 601. Daily.	EXPRESS. No. 603. Daily.
0	Lv. St. Louis Union Depot	9.10 a.m.	8.30 p.m.
75	" Bismarck	12.38 p. m.	11.48 p.m.
166	" Poplar Bluff	4.50 "	4.10 a.m.
345	" Little Rock	12.45 a.m.	12.15 p.m.
388	" Malvern	2.35 a.m.	2.03 p.m.
413	Lv. Hot Springs via H. S. R. R.	4.15 p. m.	12.10 p.m.
490	Ar. Texarkana	6.50 a.m.	6.30 p.m.

VIA TEXAS & PACIFIC RAILWAY.

Miles.	STATIONS.	EXPRESS. Daily.	EXPRESS. Daily.
0	Lv. Texarkana	7.20 a.m.	7.00 p.m.
58	" Jefferson	10.15 "	9.50 "
74	" Marshall	11.05 "	10.40 "
97	Ar. Longview Junction	12.05 p. m.	11.40 p.m.

VIA INTERNATIONAL & GT. NORTHERN R. R.

Miles.	STATIONS.	EXPRESS. Daily.
0	Lv. Longview Junction	10.40 p.m.
31	Ar. Troupe	1.30 a.m.
81	" Palestine	5.30 "
81	Lv. Palestine	4.00 "
125	Ar. Jewett	5.58 "
125	Lv. Jewett	6.32 "
171	" Marquez	8.20 "
171	" Hearne	8.50 "
190	" Milano Junction	9.45 "
204	" Rockdale	10.15 "
230	" Taylor	11.30 "
230	Lv. Taylor	11.40 a.m.
243	Ar. Round Rock	12.40 p.m.
255	Ar. Georgetown	1.40 "
243	Lv. Round Rock	12.55 p.m.
267	Ar. Austin	1.25 "
273	" Manchaca	2.05 "
278	" Kyle	2.30 "
294	" San Marcos	3.05 "
311	" New Braunfels	4.25 "
343	Ar. San Antonio	5.50 p.m.
343	Lv. San Antonio	8.30 a.m.
350	Ar. Leon	8.55 "
361	" Medina	9.30 "
365	" Lytle	9.40 "
378	" Devine	10.10 "
396	" Pearsall	11.17 "
421	" Frio	12.08 p.m.
429	" Cotulla	1.30 "
452	" Encinal	2.58 "
473	" Webb	4.16 "
486	Ar. Laredo	5.30 p.m.

(B) Breakfast. (D) Dinner. (S) Supper.

VIA TEXAS & PACIFIC RAILWAY.

Miles.	STATIONS.	EXPRESS. Daily.	EXPRESS. Daily.
0	Lv. Texarkana	7.25 a.m.	.....
61	At. Clarksville	10.20 "	.....
91	" Paris	2[11.45 "	.....
119	" Honey Grove	1.22 p.m.	.....
128	" Bonham	2.30 "	.....
142	" Bells	3.28 "	.....
155	" Sherman	4.05 "	.....
173	" Whitesboro	8[5.05 "	.....
178	Lv. Whitesboro	5.20 "	.....
208	Ar. Denton	6.57 "	.....
244	Ar. Fort Worth	8.35 p.m.	.....

To Pittsburg, Sulphur Springs, Greenville, Etc.

Miles.	STATIONS.	EXPRESS. Daily.	EXPRESS. Daily.
0	Lv. Texarkana	7.20 a.m.	7.00 p.m.
58	Ar. Jefferson	10.15 a.m.	9.50 p.m.

VIA JEFFERSON BRANCH MO. PAC. R. R.

Miles.	STATIONS.	EXPRESS. Daily.
0	Lv. J. Berson	47.40 a.m.
50	Ar. Pittsburg	11.05 "
92	" Sulphur Springs	2.35 p.m.
124	" Greenville	5.15 "
156	Ar. McKinney	7.15 p.m.

TO POINTS ON HOUSTON & TEXAS CENTRAL RAILWAY, VIA DALLAS.

Miles.	STATIONS.	EXPRESS. Daily.	EXPRESS. Daily.
0	Lv. Texarkana	* 7.20 a.m.	* 7.00 p.m.
74	" Marshall	11.05 "	10.40 "
223	Ar. Dallas	8.55 p.m.	10.40 p.m.
0	Lv. Dallas	5.50 a.m.	5.30 p.m.
31	Ar. Garrett	6.50 "	7.17 "
45	Ar. Waxahachie	7.05 "	8.40 p.m.
45	Lv. Waxahachie	7.05 a.m.	7.50 p.m.
54	" Corsicana	8[7.55 "	8[8.20 "
85	" Mexia	9.25 "	9.50 "
121	" Bremond	11.09 "	11.20 "
152	" Navasota	2.08 p.m.	2.28 a.m.
215	Ar. Hempstead	5.55 p.m.	5.20 a.m.

(B) Breakfast. (D) Dinner. (S) Supper.

* Daily. † Daily except Sunday.

IRON MOUNTAIN ROUTE.

CONDENSED TIME TABLES.

St. Louis to Bonham, Sherman, Ft. Worth, and Intermediate Points.

Miles.	STATIONS.	EXPRESS. No. 601. Daily.	EXPRESS. No. 603. Daily.
0	Lv. St. Louis Union Depot	9.10 a.m.	8.30 p.m.
75	" Bismarck	12.38 p. m.	11.48 p.m.
166	" Poplar Bluff	4.50 "	4.10 a.m.
345	" Little Rock	12.45 a.m.	12.15 p.m.
388	" Malvern	2.35 a.m.	2.03 p.m.
413	Lv. Hot Springs via H. S. R. R.	4.15 p.m.	12.10 p.m.
490	Ar. Texarkana	6.50 a.m.	6.30 p.m.

VIA TEXAS & PACIFIC RAILWAY.

Miles.	STATIONS.	EXPRESS. Daily.
0	Lv. Texarkana	7.25 a.m.
61	At. Clarksville	10.20 "
91	" Paris	1.22 p.m.
119	" Honey Grove	2.30 "
128	" Bonham	3.28 "
142	" Bells	4.05 "
155	" Sherman	5.05 "
173	" Whitesboro	5.20 "
178	Lv. Whitesboro	6.57 "
208	Ar. Denton	8.35 p.m.

To Pittsburg, Sulphur Springs, Greenville, Etc.

Miles.	STATIONS.	EXPRESS. Daily.
0	Lv. Texarkana	7.20 a.m.
58	Ar. Jefferson	10.15 "

VIA JEFFERSON BRANCH MO. PAC. R. R.

Miles.	STATIONS.	EXPRESS. Daily.
0	Lv. J. Berson	47.40 a.m.
50	Ar. Pittsburg	11.05 "
92	" Sulphur Springs	2.35 p.m.
124	" Greenville	5.15 "
156	Ar. McKinney	7.15 p.m.

TO POINTS ON HOUSTON & TEXAS CENTRAL RAILWAY, VIA DALLAS.

Miles.	STATIONS.	EXPRESS. Daily.	EXPRESS. Daily.
0	Lv. Texarkana	* 7.20 a.m.	* 7.00 p.m.
74	" Marshall	11.05 "	10.40 "
223	Ar. Dallas	8.55 p.m.	10.40 p.m.
0	Lv. Dallas	5.50 a.m.	5.30 p.m.
31	Ar. Garrett	6.50 "	7.17 "
45	Ar. Waxahachie	7.05 "	8.40 p.m.
45	Lv. Waxahachie	7.05 a.m.	7.50 p.m.
54	" Corsicana	8[7.55 "	8[8.20 "
85	" Mexia	9.25 "	9.50 "
121	" Bremond	11.09 "	11.20 "
152	" Navasota	2.08 p.m.	2.28 a.m.
215	Ar. Hempstead	5.55 p.m.	5.20 a.m.

(B) Breakfast. (D) Dinner. (S) Supper.

* Daily. † Daily except Sunday.

IRON MOUNTAIN ROUTE.

CONDENSED TIME TABLES.

St. Louis to Houston, Galveston AND INTERMEDIATE POINTS.

Miles.	STATIONS.	EXPRESS. No. 601. Daily.	EXPRESS. No. 603. Daily.
0	Lv. St. Louis Union Depot	9.10 a. m.	8.30 p. m.
75	" Bismarck	12.38 p. m.	11.48 p. m.
166	" Poplar Bluff	4.50 "	4.10 a. m.
345	" Little Rock	12.45 a. m.	12.15 p. m.
388	" Malvern	2.35 a. m.	2.03 p. m.
413	Lv. Hot Springs, via H. S. R.	4.15 p. m.	12.10 p. m.
490	Ar. Texarkana	6.50 a. m.	6.30 p. m.

VIA TEXAS & PACIFIC RAILWAY.

Miles.	STATIONS.	EXPRESS. Daily.	EXPRESS. Daily.
0	Lv. Texarkana	7.20 a. m.	7.00 p. m.
58	Ar. Jefferson	10.15 "	9.50 "
74	" Marshall	11.05 "	10.40 "
97	Ar. Longview Junc	12.05 p. m.	11.40 p. m.

VIA INTERNATIONAL & GT. NORTHERN R. R.

Miles.	STATIONS.	EXPRESS. Daily.
0	Lv. Longview	11.40 p. m.
31	" Troupe	1.30 a. m.
81	" Jacksonville	5.30 "
81	Ar. Palestine	3.30 "
81	Lv. Palestine	11.40 p. m.
119	" Crockett	5.26 "
146	" Trinity	6.55 "
165	" Phelps	7.25 "
187	" Tarcon	8.10 "
212	Ar. Houston	10.45 "
212	Lv. Houston	10.55 "
232	" Harrisburg	11.30 a. m.
246	Ar. Galveston	1.00 p. m.

(B) Breakfast. (D) Dinner.

SOLID TRAINS

ARE NOW RUN BY THIS

POPULAR ROUTE

ST. LOUIS TO GALVESTON

WITHOUT CHANGE OF CARS,

OF ANY CLASS.

PULLMAN HOTEL CAR ATTACHED.

IRON MOUNTAIN ROUTE.

CONDENSED TIME TABLES.

Cairo, Little Rock, Hot Springs and Texas Line.

Miles.	STATIONS	EXPRESS. Daily.
0	Lv. Cairo	10.30 p. m.
5	" Bird's Point	11.30 "
14	" Charleston	12.16 a. m.
19	" Bertrand	12.35 "
28	" Sikeston	1.00 "
36	" Gray's Ridge	1.30 "
43	" Essex	1.50 "
49	" Dexter	2.08 "
56	" Dudley	2.32 "
64	" Ash Hill	3.00 "
73	Ar. Poplar Bluff	3.30 "
73	Lv. Poplar Bluff	4.30 a. m.
133	" Walnut Ridge	6[7.00 "
163	" Newport	8.23 "
204	" Kensett	9.40 "
233	Ar. Little Rock	11.25 "
233	Lv. Little Rock	12.15 p. m.
295	Ar. Malvern	2.03 p. m.
320	Ar. Hot Springs, via Hot Sp'gs R. R.	3.55 p. m.
295	Lv. Malvern, via Iron Mt. Route	2.03 p. m.
397	Ar. Texarkana	6.30 p. m.
397	Lv. Texarkana, via T. & P. R'y	* 7.00 p. m.
471	Ar. Marshall	10.35 "
491	Ar. Longview	11.40 p. m.
491	Lv. Longview, via I. & G. N. R'y	11.40 p. m.
525	Ar. Palestine	5.30 "
525	Lv. Palestine	5.26 "
640	" Trinity	10.45 "
676	" Houston	1.40 p. m.
676	Ar. Galveston	
575	Lv. Palestine, via I. & G. N. R'y	4.00 a. m.
655	Ar. Corsicana	8[8.20 "
685	" Milford Junction	9.45 "
720	" Taylor	11.30 "
736	" Austin	1.25 p. m.
736	" Austin, via S. P. R'y	8[5.30 p. m.
796	" San Antonio	8[8.30 "
796	Ar. San Antonio	8[9.30 "
650	Lv. Laredo	5.30 p. m.
2057	Ar. Saramento, via S. P. R'y	10.30 a. m.
2057	Ar. San Jose, via S. P. R'y	4.55 p. m.
2044	Ar. San Francisco, via S. P. R'y	10.30 a. m.

(B) Breakfast. (D) Dinner. (S) Supper.

PALACE SLEEPING CARS

Are run via this Line from St. Louis to San Francisco, with but one change, at Deming, N. M.

At Laredo connection is made with trains of Texas Mexican R'y for Nuevo Laredo and Corpus Christi, also with trains of Mexican National R'y for Monterey, Mexico, and intermediate points.

IRON MOUNTAIN ROUTE.

CONDENSED TIME TABLES.

St. Louis to Ft. Smith and Intermediate Points.

Miles.	STATIONS.	EXPRESS. No. 601. Daily.	EXPRESS. No. 603. Daily.
0	Lv. St. Louis Union Depot	9.10 a. m.	8.30 p. m.
75	" Bismarck	12.38 p. m.	11.48 p. m.
166	" Poplar Bluff	4.50 "	4.10 a. m.
344	Ar. L. R. & Ft. S. Crossing	12.10 a. m.	11.35 a. m.

Via LITTLE ROCK & FORT SMITH RAILWAY.

Miles.	STATIONS.	EXPRESS. Daily.
0	Lv. St. L., I. M. & S. Crossing	12.35 p. m.
50	" Conway	2.06 "
80	" Morrilton	2.44 "
125	" Russellville	4.36 "
167	" Ozark	5.20 "
199	Ar. Van Buren	5.40 p. m.
205	Ar. Fort Smith	

To Pine Bluff, Arkansas City, Monticello, etc.

Miles.	STATIONS.	EXPRESS. Daily.	EXPRESS. Daily.
0	Lv. St. Louis Union Depot	9.10 a. m.	8.30 p. m.
75	" Bismarck	12.38 p. m.	11.48 p. m.
166	" Poplar Bluff	4.50 "	4.10 a. m.
345	Ar. Little Rock	12.30 a. m.	11.55 a. m.

Via LITTLE ROCK, MISS. RIVER & TEXAS R. R.

Miles.	STATIONS.	EXPRESS. Daily.	EXPRESS. Daily.
0	Lv. Little Rock	† 2.30 a. m.	† 4.30 p. m.
47	" Pine Bluff	5.35 "	8.10 p. m.
93	" Winchester	12.00 m'n	
112	Ar. Arkansas City	1.20 p. m.	

* Daily. † Daily except Sunday.

Pullman Sleepers from St. Louis to Little Rock without change. Omnibus transfer in Little Rock to L. R., M. Rv. & Tex. Depot. Through cars thence to Arkansas City, where change is made for Coushatta Division. Trains daily except Sunday.

Stop-over Privileges. No stop-over is allowed on any kind or class of tickets, except as follows:

1st. On Land Explorers' Tickets to Texarkana and return, stop-over will be allowed at such points on the St. Louis, Iron Mountain & Southern Railway as may be necessary to examine the lands offered for sale by the Company. Conductors have lists of these stations and will inform holders of such tickets where they will be allowed to stop over and provide for their doing so within the limit of the tickets.

2d. Land Explorers' tickets to Baird and return, stop over will be allowed at Marshall, Dallas, Fort Worth, Weatherford, Gordon, and Eastland.

3d. Passengers holding first-class tickets, limited or unlimited, will be allowed to stop off at Malvern to enable them to visit Hot Springs, but limit can not be extended for this purpose.

4th. Passengers holding first-class tickets, limited or unlimited, to or from San Francisco and points on the southern Pacific R'y, via El Paso, will be allowed to stop off at pleasure, but must be on and continue that day privilege in no case lengthens the limit of limited tickets.

IRON MOUNTAIN ROUTE.

ELEGANT

Pullman Hotel Cars

ARE IN SERVICE BETWEEN

ST. LOUIS AND GALVESTON

WITHOUT CHANGE.

These Model Cars are elegantly finished, having been built specially for this Line, and combine all that is luxurious and convenient. One of these cars leaves St. Louis and Galveston

EVERY DAY IN THE YEAR.

and for a moderate price, a meal that can not be excelled in any first-class hotel will be furnished.

Emigrant Sleeping Cars

Leave Union Depot, St. Louis, *morning and evening daily*, are attached to Express Trains, run through, *without change* to and connect at *El Paso* with Southern Pacific. These Sleepers were built by this Company expressly for the use of those emigrating to *Arkansas, Texas and California*.

They are large, roomy, well-ventilated, finely lighted with large windows by day, and at night by handsome lamps suspended from the arched roof. The seats are so arranged that they can be formed into a double bed, while above is a closed double upper berth which can be let down at night, forming a bed of same capacity as the lower, thus making inside room for a family of four persons to sleep in their own section separate from others in the car. Instead of being compelled to sit up on hard and straight backed seats, here you have an excellent Sleeper, nearly as desirable as a bed at home. Besides these perfect sleeping arrangements, each car contains a large stove in either end, each of which has a large sheet-iron oven attached, in which coffee and provisions can be heated and freshened. Roomy saloons are built in each car, and large water tanks filled with pure fresh water, to which are built convenient washstands, thus making them complete in every detail, lacking nothing that will serve to make a ride in these Sleepers comfortable and without the fatigue usually experienced.

These Sleepers are run for the accommodation of Emigrants,

FREE OF CHARGE.

IRON MOUNTAIN ROUTE.

THROUGH CARS.

THE MEXICAN CENTRAL RAILWAY

Is now open to the City of Mexico, and passengers going via the Iron Mountain Route make *direct* connection at El Paso. From *New York or Boston* the best line to the Capital of the Mexican Republic can be made with but *two changes of cars*, one in *Union Depot*, St. Louis, one at El Paso.

The journey is made in elegant Pullman and Wagner Sleeping Cars, with Dining and Buffet Cars attached. The distance from New York to El Paso, 2,341 miles, is made in 4 days and 3 nights. From Boston to El Paso, 2,506 miles, in 4 days and 3 nights.

Via any other route there is at least one more change of cars, and several hours' additional time required to make it.

This is the *quickest, surest and most comfortable* route for those desiring to go to the *City of Mexico*.

CALIFORNIA & WESTERN TEXAS LINE.

Train leaving St. Louis Union Depot at 9.10 a. m. daily, has Pullman Buffet Sleeping Car to Deming, N. M., where passengers for San Francisco, Cal., change to a Pullman Palace Sleeping Car through to San Francisco.

Train leaving San Francisco at 5.30 p. m., daily, has Pullman Palace Sleeping Car to Deming, N. M., where passengers change to an elegant Pullman Buffet Sleeping Car through to St. Louis. Coaches and baggage cars through both ways between El Paso and St. Louis. This makes but one change of cars between St. Louis and San Francisco via the I. M. route. Excellent meals and lunches are served on the Pullman Buffet Cars at all hours.

HOUSTON & GALVESTON LINE.

Train leaving St. Louis Union Depot at 8.30 p. m. has Pullman Hotel Car to Houston and Galveston without change. Coaches St. Louis to Galveston.

Train leaving Galveston daily at 4.30 p. m., and Houston at 6.25 p. m., has Pullman Hotel Car to St. Louis without change. Coaches Galveston to Texas.

LITTLE ROCK & HOT SPRINGS LINE.

Train leaving St. Louis daily at 9.10 a. m. has Pullman Buffet Sleeping Car, and train leaving St. Louis daily at 8.30 p. m. has Pullman Hotel Car St. Louis to Little Rock and Malvern without change.

Trains leaving Malvern daily at 1.40 p. m. and 11.25 p. m., and Little Rock at 3.50 p. m. and 3.45 a. m., have Pullman Sleeping Cars to St. Louis without change.

ST. LOUIS & SAN ANTONIO LINE.

Train leaving St. Louis daily at 8.30 p. m. has Pullman Buffet Sleeping Car to San Antonio.

Train leaving San Antonio at 11.00 a. m. daily has Pullman Buffet Sleeping Car to St. Louis without change.

ST. LOUIS & NEW ORLEANS LINE.

Train leaving St. Louis daily at 8.00 p. m. has Pullman Sleeping Car, St. Louis to New Orleans, without change, via Cairo, Ill., Memphis & Ohio and New Orleans & Northeastern Railway via Meridian, Miss.

Train leaving New Orleans at 10.00 p. m. has Pullman Sleeping Car to St. Louis without change, via same route.

This route is 81 miles shorter than via Mobile.

FROM	TO	Double Berth.	Single Berth.	Drawing Room.
St. Louis	Little Rock	$ 5.00	$ 6.00	$ 9.00
"	Malvern	6.00	7.00	10.00
"	Marshall	8.00	9.00	14.00
"	Palestine	8.00	9.00	14.00
"	Houston	10.00	12.00	18.00
"	Galveston	10.00	12.00	18.00
"	Dallas	8.00	9.00	14.00
"	Fort Worth	8.00	9.00	14.00
"	Baird	10.00	12.00	18.00
"	Abilene	10.00	12.00	18.00
"	El Paso	11.00	13.00	20.00
"	Deming	11.00	13.00	20.00
"	San Francisco	18.00	22.00	32.00
Memphis	Little Rock	3.00	3.50	5.00
Little Rock	Texarkana	5.00	6.00	7.00
"	Dallas	8.00	9.00	14.00
"	El Paso	11.00	13.00	20.00
"	Laredo	11.00	13.00	20.00
"	San Francisco	18.00	22.00	32.00
"	Houston	8.00	9.00	14.00
New Orleans	Marshall	8.00	9.00	14.00
"	Dallas	8.00	9.00	14.00
"	El Paso	11.00	13.00	20.00
"	Deming	11.00	13.00	20.00
"	San Francisco	18.00	22.00	32.00

Pullman Hotel Cars are run between St. Louis and Galveston without change, affording passengers the opportunity of procuring excellent meals at moderate prices.

IRON MOUNTAIN ROUTE.

HOT SPRINGS OF ARKANSAS.

THE ONLY DIRECT LINE

TO THE

HOT SPRINGS OF ARKANSAS

IS VIA THE

Iron Mountain Route

Special Pullman Palace Sleeping Cars will be run through from St. Louis to Malvern only twenty hours, from Hot Springs, where connection is made with the Hot Springs R. R.

Round Trip Excursion Tickets are sold from all the principal points in the country to Hot Springs at

LOWER RATE THAN EVER BEFORE

and are good to return ninety (90) days from date of sale.

PULLMAN RATES.

FROM	TO	Double Berth.	Single Berth.	Drawing Room.
St. Louis	Little Rock	$ 5.00	$ 6.00	$ 9.00
"	Malvern	6.00	7.00	10.00
"	Marshall	8.00	9.00	14.00
"	Palestine	8.00	9.00	14.00
"	Houston	10.00	12.00	18.00
"	Galveston	10.00	12.00	18.00
"	Dallas	8.00	9.00	14.00
"	Fort Worth	8.00	9.00	14.00
"	Baird	10.00	12.00	18.00
"	Abilene	10.00	12.00	18.00
"	El Paso	11.00	13.00	20.00
"	Deming	11.00	13.00	20.00
"	San Francisco	18.00	22.00	32.00

Pullman Hotel Cars are run between St. Louis and Galveston without change, affording passengers the opportunity of procuring excellent meals at moderate prices.

IRON MOUNTAIN ROUTE.

ST. LOUIS

TO

Memphis, Mobile, New Orleans,

Chattanooga, Atlanta, Richmond, Savannah, and Intermediate Points.

STATIONS.	605 Daily.	607 Daily.
Lv. St. Louis Union Depot...via I. M. Route	8.40 p.m.	8.15 a.m.
" Charleston	4.30 "	4.10 p.m.
" Belmont	5.50 "	5.30 "
" Columbus	6.45 "	6.00 p.m.
Lv. Columbus...via M. & O. R.R.	4.45 a.m.	4.30 a.m.
Ar. Union City	8.47 "	"
Ar. Rives...via M. & O. R.R.	8.50 a.m.	"
Lv. Rives...via C. O. & S. W.	9.10 a.m.	"
Ar. Memphis	2.05 p.m.	11.55 a.m.
Ar. Humboldt...via M. & O. R.R.	10.40 a.m.	"
Lv. Humboldt...via L. & N.	1.40 p.m.	"
Ar. Memphis	4.30 "	4.30 p.m.
Ar. Jackson, Tenn...via M. & O.	11.35 a.m.	"
" Corinth	2.30 p.m.	"
" Artesia	6.46 "	"
" Macon	9.50 "	"
" Meridian	8.30 p.m.	"
Lv. Meridian...via N. O. & A. N. E. R.	10.50 p.m.	"
Ar. New Orleans	7.15 a.m.	"
Lv. Meridian...via M. & O.	10.30 p.m.	"
Ar. Mobile	4.00 a.m.	"
Lv. Mobile...via L. & N.	4.20 p.m.	"
Ar. New Orleans	12.50 p.m.	12.30 p.m.
Lv. Canon City...via N. O. & N. E. R'y	5.00 p.m.	6.25 p.m.
" McKenzie	5.02 "	8.15 "
Ar. Nashville	8.40 p.m.	1.35 a.m.
Ar. Chattanooga	"	7.15 a.m.
Lv. Chattanooga...via W. & A. R.R.	2.45 p.m.	7.50 a.m.
Ar. Atlanta	8.02 "	1.35 p.m.
Lv. Chattanooga...via E. T. V. & G. R.R.	3.00 p.m.	7.55 a.m.
Ar. Atlanta	8.30 "	1.40 p.m.
Lv. Atlanta...via R. & D. R.R.	8.40 a.m.	6.00 p.m.
" Greenville	2.31 p.m.	12.49 a.m.
" Barkville	4.38 a.m.	2.36 p.m.
" Burkville	4.58 a.m.	2.56 p.m.
Lv. Chattanooga...via E. T. V. & G. R.R.	7.15 a.m.	7.15 a.m.
Ar. Bristol	6.00 a.m.	5.00 p.m.
Lv. Bristol...via N. & W. R.R.	7.10 a.m.	6.10 p.m.
Ar. Burkville	2.00 p.m.	1.00 a.m.
Lv. Burkville...via K. & D. R.R.	4.08 a.m.	2.06 p.m.
Ar. Richmond	5.00 a.m.	4.58 p.m.
Lv. Milnak...via Cent. R.R. & Ga.	11.45 p.m.	5.50 a.m.
Ar. Macon	11.45 "	8.05 "
Ar. Savannah	6.30 a.m.	3.30 p.m.
Ar. Charleston...via C. & N. R.R.	12.40 p.m.	1.05 a.m.
Lv. Macon...via M. & B. R.R.	12.45 a.m.	7.20 p.m.
Ar. Jessup	4.50 a.m.	2.50 a.m.
Ar. Brunswick	8.30 "	6.15 a.m.
Lv. Atlanta...via Geo. R. R.	8.30 p.m.	2.45 p.m.
Ar. Augusta	6.10 a.m.	8.15 "
Ar. Charleston	"	12.20 p.m.
Ar. Savannah	3.30 p.m.	6.25 a.m.

Through Pullman Sleeper to New Orleans leaves St. Louis daily at 8.40 p. m.

IRON MOUNTAIN ROUTE.

THROUGH TIME TABLE

FROM

WILMINGTON, CHARLESTON, SAVANNAH,

And Intermediate Points, to

ARKANSAS AND TEXAS.

STATIONS.	EXPRESS.	EXPRESS.
Lv. Wilmington...via W., C. & A. R. R.	* 9.05 p. m.	* 10.20 p. m.
" Fair Bluff	11.26 "	12.40 a. m.
" Marion	12.18 a. m.	12.50 a. m.
" Florence	1.40 "	1.25 a. m.
Ar. Columbia	4.05 a. m.	"
Lv. Columbia...via C., C. & A. R. R.	10 a. m.	* 5.55 p. m.
" Graniteville	9.57 "	9.00 "
Ar. Augusta	10.35 a. m.	9.38 p. m.
Lv. Charleston...via South'n Ry. R'y	* 10.30 p. m.	* 7.40 a. m.
" Branchville	2.35 a. m.	8.42 "
Ar. Augusta	7.30 "	11.55 "
Lv. Charleston...via C., A. & S. R'y	* 2.15 p. m.	* 6.00 a. m.
" Charleston Junction	2.38 "	12.25 p. m.
" Green Pond	4.06 "	8.12 "
Ar. Yemassee	4.36 p. m.	8.56 a. m.
Lv. Yemassee...via P. B. A. & A. R. R.		* 8.50 a. m.
" Appleton		11.05 "
Ar. Augusta		2.40 p. m.
Lv. Savannah...via Cent. R. R. of Ga.	* 8.45 p. m.	* 10.00 a. m.
" Gibson	10.25 "	11.50 "
" Milen	11.34 "	1.08 p. m.
" Cochran	2.30 a. m.	4.05 "
" Waynesboro	3.42 "	5.17 "
Ar. Augusta	5.50 "	7.45 "
Lv. Augusta...via Georgia R. R.